



1905

## Rhode Island Court and Practice Act Part 1 (i-176)

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State of Rhode Island and Providence Plantations.

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# THE COURT AND PRACTICE ACT

PASSED BY THE

GENERAL ASSEMBLY

AT ITS

JANUARY SESSION, A. D. 1905

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PROVIDENCE, RHODE ISLAND :  
E. L. FREEMAN & SONS, STATE PRINTERS

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# THE COURT AND PRACTICE ACT.

State of Rhode Island and Providence Plantations.

IN GENERAL ASSEMBLY.

JANUARY SESSION, A. D. 1905.

AN ACT REVISING THE JUDICIAL SYSTEM OF THE STATE  
TO CONFORM TO ARTICLE XII OF AMENDMENTS TO THE  
CONSTITUTION.

(Passed May 3, 1905.)

*It is enacted by the General Assembly as follows:*

## TITLE I.

OF THE JUDICIARY.

### CHAPTER 1.

OF THE SUPREME COURT.

SECTION 1. The supreme court shall consist of a chief justice and four associate justices.

SEC. 2. The supreme court shall have general supervision of all courts of inferior jurisdiction to correct and prevent errors and abuses therein when no other remedy is expressly provided; it may issue writs of habeas corpus, of error, certiorari, mandamus, prohibition, quo warranto, and all other extraordinary and prerogative writs and processes necessary for the furtherance of justice and the due administration of the law; it may entertain informations in the nature of quo warranto and petitions

33 R. I. 88

36,  
30 R. I. 277,  
357,  
360.

29 R. I. 481

28 R. I. 210

30 R. I. 361

27 R. I. 119

20 R. I. 210

590  
28 R. I. 553  
554

in equity to determine title to any office; it shall have jurisdiction of petitions for trials and new trials as provided by law, bills of exceptions, appeals, and certifications to the supreme court, and special cases in which parties having adversary interests concur in stating questions for the opinion of the court as provided by law, and shall by general or special rules regulate the admission of attorneys to practice in all the courts of the state.

SEC. 3. The supreme court shall render written opinions in all cases decided by it wherein points of law, pleading, or practice have arisen which are novel or of sufficient importance to warrant written opinions. Three copies of each opinion or rescript shall be prepared and filed by the secretary of the court with the clerk of the court at the time of filing the original; one copy for the use of the reporter, one for the plaintiffs, and one for the defendants in the cause in which the opinion or rescript is given. Each of said copies shall be certified as a true copy by the clerk.

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## CHAPTER 2.

### OF THE SUPERIOR COURT.

33 R. I. 89  
30 R. I. 257 SECTION 4. There shall be a superior court which shall consist of a presiding justice and five associate justices.

SEC. 5. The justices of the superior court shall be elected by the general assembly in grand committee and shall hold their offices during good behavior, unless removed on impeachment or by concurrent resolution passed by three-fifths of the members elected to each of the houses of the general assembly. The resolution shall be introduced at least ten days

before a vote shall be taken thereon, and shall state the cause or causes for the same, and before any vote is taken thereon the justice named therein shall be served with a copy of the resolution and be given an opportunity to be heard. The resolution, together with the ayes and nays thereon, shall be entered on the journals of both houses of the general assembly.

SEC. 6. A superior court shall be holden at such times and places as shall be appointed by law, by such of the justices thereof as shall be designated from time to time by the presiding justice.

SEC. 7. Any one justice of the superior court shall be a quorum for all purposes, except as otherwise provided; but the court may, when so ordered by the presiding justice, be holden for any purpose by two or more justices, to be designated as aforesaid.

SEC. 8. Superior courts may be held, with or without juries, by different justices at the same time and in different places in the same county or in different counties.

SEC. 9. The superior court shall have exclusive original jurisdiction, except as otherwise provided by law, of suits and proceedings in equity, and of statutory proceedings following the course of equity, of petitions for divorce, separate maintenance, alimony, and custody of children.

SEC. 10. The superior court shall have original jurisdiction of all actions at law where title to real estate or some right or interest therein is in issue, except actions for possession of tenements let or held at will or by sufferance; and shall also have exclusive original jurisdiction of all other actions at law in which the debt or damages laid in the writ shall exceed the sum of five hundred dollars: *Provided*, that the plaintiff shall not recover costs unless he shall recover in such action not less than five hundred



dollars, or unless the action be an action of replevin, of ejectment, or other action in which the title to real estate or some right or interest therein is in question, or unless in the discretion of the court, on motion, costs be awarded.

SEC. 11. The superior court shall have original jurisdiction of all crimes, offences, and misdemeanors, except as otherwise provided by law, and shall sentence all persons found guilty before it to the punishment prescribed by law, and all indictments found by grand juries shall be returned into said court.

27 R. L. 402  
33 R. L. 35  
SEC. 12. The superior court shall have jurisdiction of such motions for new trials as may be provided by law, and concurrently with the supreme court shall have jurisdiction of writs of habeas corpus, mandamus, quo warranto, and informations in the nature of quo warranto.

SEC. 13. The superior court shall have jurisdiction of such appeals and statutory proceedings as may be provided by law, and may exercise general probate jurisdiction in all cases brought before it on appeal from probate courts or when such jurisdiction is properly involved in suits in equity.

SEC. 14. Any civil cause or any question of law or fact therein, and any question of law in any criminal proceeding, may, by consent of the parties and with the approval of the court, be tried and determined in any county.

SEC. 15. The superior court may order the papers in any cause to be sent from one county to another; and in matters heard in any county other than that in which the cause was entered, the court shall certify the proceedings to the clerk of the court in the county in which the cause was entered, and shall send to such clerk all the papers therein, to be kept on file in his office and there recorded.



SEC. 16. Any justice of the superior court may order special service of any process, original or auxiliary, at law or in equity, in any proceeding within the jurisdiction of the court, by personal notice, notice by mail or publication in a newspaper within or without the state, for the purpose of dealing with any property, relation, or person within the state and subject to the jurisdiction of the court, and may make orders, decrees, and judgments in one county in cases pending in any other county, which orders and decrees and judgments shall be transmitted to the clerk of the court for such other county.

SEC. 17. Any justice of the supreme court may exercise in the vacation of the superior court all the powers which may be exercised during such time by a justice of the superior court.

SEC. 18. All grand juries shall be impaneled by the superior court. They shall be empowered, required, and charged to diligently inquire and true presentment make of all crimes and offences done or committed within their jurisdiction, and shall, in so far as may be deemed necessary, be instructed by the court in the law relative thereto.

SEC. 19. The superior court may arraign all persons presented by a grand jury, and may require such persons to plead to the indictment against them, if in custody, or if taken while said court is in session; and if not in custody, or taken as aforesaid, may issue writs of *capias* on such indictments, returnable to the same or to the next session of said court in the same county.

SEC. 20. The superior court may admit to bail all persons brought before it for any offence whatsoever.

SEC. 21. Whenever any prisoner shall be arraigned before the superior court, and shall plead guilty, or

refuse to contend with the state, he may be sentenced by the court.

SEC. 22. The superior court may require the complainant in any criminal pleading pending therein to give recognizance with sufficient surety to prosecute his complaint with effect, and in default thereof the court may dismiss the complaint.

SEC. 23. In every case, civil and criminal, tried in the superior court with a jury, the justice presiding shall instruct the jury in the law relating to the same, and may sum up the evidence therein to the jury whenever he may deem it advisable so to do; but any material misstatement of the testimony by him may be excepted to by the party aggrieved.

SEC. 24. Whenever it shall be made to appear to the satisfaction of the superior court, as hereinafter provided, by either party to any action, suit, or proceeding, civil or criminal, now or hereafter pending therein, that by reason of local prejudice or other cause the parties to such action, suit, or proceeding, or either of them, cannot have a full, fair, and impartial trial in the court for the county where the same shall have been commenced or shall be pending, the court shall order such cause to be removed for trial to such other county as shall be deemed most fair and equitable for the parties.

SEC. 25. Applications for the removal of any action, suit, or proceeding, as provided in the preceding section, shall be by petition setting forth the cause or reasons therefor; which petition shall be filed in the office of the clerk of the superior court for the county where such action, suit, or proceeding is pending, and a copy thereof, in all civil causes, served on the adverse party, or his attorney of record, within ten days, and, in all criminal proceedings, upon the attorney-general or assistant attorney-

general, within five days, after the filing of such petition; and no such petition in any action, suit, or proceeding, civil or criminal, shall be heard until the expiration of five days after the service of such copy, unless by agreement of the parties.

SEC. 26. If, upon hearing said petition and the evidence thereon, the court shall be of opinion that a full, fair, and impartial trial cannot be had in the court for the county where the cause shall have been commenced or is pending, the court shall make an order of removal, directing the clerk of the court where the cause is pending to transmit the record thereof to the clerk of the court for the county named in said order of removal, to which county the cause shall be removed.

SEC. 27. After said cause shall have been finally tried and decided in the county to which it shall have been removed, the clerk of the court for such county shall remit the record thereof to the clerk of the court for the county from which the cause was removed.

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### CHAPTER 3.

#### PROVISIONS COMMON TO THE SUPREME AND SUPERIOR COURTS AND TO THE JUSTICES THEREOF.

SECTION 28. Every justice of the supreme court and of the superior court shall, before exercising any of the duties of his office, subscribe in duplicate and take the following engagement: I do solemnly swear (or, affirm) that I will support the constitution of the United States and the constitution and laws of this state; that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully



and impartially discharge and perform all the duties incumbent on me as \_\_\_\_\_ according to the best of my abilities, agreeably to law; so help me God. (Or, this affirmation I make and give upon peril of the penalty of perjury.) One of said engagements shall be filed in the office of the clerk of the court of which the justice is a member and entered upon the record thereof, and the other shall be filed in the office of the secretary of state.

SEC. 29. Whenever any person has served as a justice in said courts or either of them for twenty-five years, or has so served for ten years, and reached the age of seventy years, he may resign his office, and the salary which he is then receiving shall be paid to him during his life: *Provided*, that the provisions of chapter 1062 of the public laws shall continue to apply to the present justices of the supreme court.

SEC. 30. No justice shall sit in the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him or his wife by consanguinity nearer than the relationship of second cousin, or in which he may have been counsel, or in which he has presided in any inferior court, or in any case in which the ruling or act of such justice sitting alone or with a jury is the subject of review, except by consent of all the parties: *Provided*, that residence or payment of taxes in any town or an interest in common with all the inhabitants of such town shall not exclude him from sitting in any cause to which such town is a party or in which such town or the inhabitants thereof may be interested; *and provided, further*, that the interest which shall disqualify any justice from so sitting shall be a beneficial and not a technical or nominal interest.

SEC. 31. The associate justices shall have pre-

cedence in their respective courts according to the dates of their commissions, or when the commissions of two or more of them bear the same date, according to their ages.

SEC. 32. Whenever there is a vacancy in the office of chief justice or of presiding justice, or whenever either of said justices shall be unable, by reason of illness or absence, to perform the duties of his office, the associate justice of the same court having precedence, who is present and qualified to act, shall perform the duties of the office until the vacancy shall be filled or the inability removed.

SEC. 33. The supreme and superior courts shall have power to enter such judgments, decrees, and orders, and to frame and issue such citations, executions, and other writs and processes, as may be necessary or proper to carry into full effect all the powers and jurisdiction which are or shall be conferred upon them respectively by the constitution or by law. They shall have power to punish, by fine or imprisonment, or both, all contempts of their authority.

SEC. 34. Each of said courts, by a majority of its members, may from time to time make and promulgate rules for regulating practice and conducting business therein, in matters not expressly provided for by law. The rules of the superior court shall be subject to the approval of the supreme court.

SEC. 35. The justices of the supreme and superior courts shall, by virtue of their office, be severally conservators of the peace throughout the state, and shall severally have the same power in criminal cases throughout the state that district courts have in their respective districts.

SEC. 36. The supreme court shall have a seal, which shall contain the words SUPREME COURT OF THE STATE OF RHODE ISLAND AND



PROVIDENCE PLANTATIONS, and such device as the court shall adopt. The superior court shall have a seal in each of the counties of Providence, Newport, Kent, and Washington, which shall contain the words SUPERIOR COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, with the name of the county in which said seal belongs, and also such device as the justices of said court, or a majority of them, shall adopt.

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#### CHAPTER 4.

##### OF THE SESSIONS OF THE SUPREME AND SUPERIOR COURTS.

SECTION 37. The supreme court shall be in session at Providence from the first Monday in October to the second Monday in July in every year, and at such other times as said court shall deem proper, with a recess from the third Monday in February to the first Monday in March: *Provided*, that the court may hold sessions at other places within the state whenever it may deem advisable.

Cap. 1441  
Jan 07  
SEC. 38. The superior court shall hold its sessions every year at the times and places following, to wit.: At South Kingstown, within and for the county of Washington, on the third Monday of October, December, March, and June; at Newport, within and for the county of Newport, on the first Monday of October, December, March, and June; at East Greenwich, within and for the county of Kent, on the fourth Monday of September, December, February, and May; and at Providence, for the counties of Providence and Bristol, on the third Monday in September, and thence continuously to

the second Monday in July of the following year: *Provided*, that there shall be no jury trials in Providence between the first Monday of July, inclusive, and the first Monday of October in each year, except by agreement of parties with the consent of the court.

SEC. 39. There shall be a vacation of the superior court from the second Monday in July to the third Monday in September in each year: *Provided*, that a justice shall be present during said vacation, at the county court house in Providence daily, Sundays and legal holidays excepted, from ten o'clock in the forenoon until one o'clock in the afternoon, for the hearing of such matters as may lawfully come before said court.

SEC. 40. The superior court, except in vacation, *Cap. 1441* shall sit in Providence county at Providence every *Jan 07* Saturday; in Newport county at Newport the first Monday in each month; in Washington county at South Kingstown the third Monday in September, October, December, March, and June; and in Kent county at East Greenwich the fourth Monday of September, December, February, May, and June, to hear and decide all motions, petitions, and other matters made returnable on such days, in any cause or proceeding pending in said court within the counties for which the court is held, which days shall be known as motion days: *Provided*, that nothing herein contained shall prevent the court from hearing and determining all such motions, petitions, and matters as may arise or be brought before it at any other time when it is in session within the county where the cause or proceeding is pending.

SEC. 41. The superior court holden at Providence *Cap. 1441* shall from time to time make up lists of causes to *be Jan 07* tried at Woonsocket and Bristol, and shall hold sessions at Woonsocket on the first Monday of October,

February, and June, and at Bristol on the third Monday of November and April, for the trial or other disposition of such causes.

*Cap. 1441*  
*Jan 07*  
SEC. 42. The superior court shall at each session holden at South Kingstown in October, December, March, and June make up a list of causes to be tried at Westerly, and shall, at times to be appointed by the court, hold adjourned sessions at Westerly for the trial or other disposition of said causes.

SEC. 43. In making up the lists provided for in sections 41 and 42, causes may be placed thereon by agreement of the parties, and also upon motion of either party when in the opinion of the court such causes can be tried at the place for which the list is made up more conveniently for the parties and more economically than at the place where such causes are entered. A cause upon any such list may be removed therefrom by agreement of parties, or by the court upon motion of either party for cause shown.

*38 R. L. 361*  
SEC. 44. In the absence of a quorum of the supreme court the justices in attendance may adjourn. In case of the absence of any justice of the superior court from any trial pending before him, any other justice of said court may adjourn such trial.

SEC. 45. Whenever, at any time appointed for the sitting of the superior court, no justice thereof shall be in attendance, the clerk may adjourn the same from day to day until otherwise ordered by a justice of said court.

SEC. 46. The superior court, subject to the provisions of section 47, shall be always open for the transaction of all business; but no business shall be transacted on Sunday or a legal holiday, unless the court shall deem the same necessary.

SEC. 47. In vacation the superior court shall not



hear jury trials, petitions for divorce, or motions to default recognizances; and said court in vacation shall not be obliged to, though by consent of parties it may, hear and decide motions for new trial, appeals, demurrers, motions in arrest of judgment, and cases in which jury trial is waived, or equity causes and causes following the course of equity, and may enter final orders and decrees therein: *Provided*, that the court may at all times enter final orders and decrees upon default and upon bills and petitions for the appointment of trustees.

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## CHAPTER 5.

### OF CLERKS OF THE SUPREME AND SUPERIOR COURTS.

SECTION 48. There shall be a clerk of the supreme court, with an office in Providence.

SEC. 49. There shall be a clerk of the superior court for the counties of Providence and Bristol, and a clerk of said court for each of the counties of Newport, Washington, and Kent. There shall also be an assistant clerk of the superior court for the counties of Providence and Bristol, who shall be a resident of and have an office in the town of Bristol.

SEC. 50. The clerk of the supreme court, and each of the clerks of the superior court, shall, before entering upon the duties of his office, give bond to the general treasurer in a sum to be fixed by said treasurer, not less than two thousand nor more than ten thousand dollars, with surety satisfactory to him, in form approved by the attorney-general, conditioned faithfully to discharge the duties of his office according to law.

SEC. 51. Such clerks shall constantly attend the

sittings of their respective courts, shall keep the seal, books, and papers thereof, shall make fair entries and records of all the proceedings, judgments, orders, and decrees therein, shall furnish stationery to be allowed by the court for the use of the same, and shall do and perform all other things which by law or the rules of the court shall appertain to their office.

SEC. 52. Such clerks shall, in the record of every judgment, recite the substance of the declaration and pleadings in the case; and whenever, by accident, neglect, or otherwise, any clerk shall have failed to record the proceedings of the court of which he is clerk, in any cause pending before it, such court may direct the acting clerk to record such proceedings, upon such evidence as may be satisfactory to it, giving notice to the parties interested, or their attorneys, whenever from the circumstances of the case the court may deem it proper.

SEC. 53. Such clerks shall make or cause to be made two indexes to every current book of records of judgments in their offices, one, an alphabetical index of the names of all the plaintiffs, complainants, or petitioners, giving also the names of the defendants or respondents, in each case; and the other, an alphabetical index of the names of all the defendants or respondents, giving also the names of the plaintiffs, complainants, or petitioners, in each case.

SEC. 54. The clerks of the superior court shall make returns to the secretary of the state board of health, on or before the first day of March in each and every year, for the year ending on the thirty-first day of December preceding, of all the applications for divorce, showing the number of applications, the number thereof continued, the number granted, and the causes for which the same are granted, but without the names of the parties, in accordance with the



blanks which shall be furnished them by the secretary of state.

SEC. 55. In case of the death, resignation, absence, inability, or refusal to serve of any of said clerks, the chief justice, or the presiding justice of the court in which the same occurs, may appoint a clerk pro tempore, who shall hold his office until the clerk shall have returned or the inability shall have been removed or another clerk shall have been elected and qualified.

SEC. 56. The clerk so appointed shall be sworn and give bond before he enters upon the duties of his office, and shall, during his term of service, be entitled to the fees and compensation of the office.

SEC. 57. The clerk of the supreme court, with the approval of the chief justice, and each of the clerks of the superior court, with the approval of the presiding justice, may appoint one or more deputy clerks, who, being sworn, may discharge all the duties of the clerk appointing them.

SEC. 58. Such deputy clerk shall be removable at the pleasure of the clerk appointing him, or of the court, and the clerk appointing him shall provide for his compensation and be liable for his misconduct or neglect of duty.

SEC. 59. The clerk of the supreme court shall appoint, with the approval of the court, not more than two assistant clerks, who shall hold office until removed by the clerk or the court.

SEC. 60. The clerk of the superior court in the county of Providence shall, with the approval of a majority of the justices thereof, appoint not exceeding six assistant clerks, who shall hold office until removed by said clerk or by a majority of said justices.

SEC. 61. Each of said assistant clerks for the

Amended  
Cap 40.6  
Jan. '09.

counties of Providence and Bristol shall aid his principal in the discharge of his duties and especially shall keep the office open during the business hours of each week-day except when he may be needed in court. Each of said assistant clerks for the counties of Providence and Bristol shall have authority to administer oaths to parties, witnesses, and others, as required in the conduct of the proceedings of the court.

SEC. 62. The clerk of the superior court within the county of Newport may employ clerical assistance in his office, at an annual expenditure of not exceeding three hundred dollars.

Amended  
Cap. 1546  
Jan. '08.

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## CHAPTER 6.

### OF THE REPORTER AND REPORTS OF THE SUPREME COURT.

SECTION 63. The supreme court shall appoint a reporter of the decisions and opinions of the court, who shall hold office during the pleasure of the court.

SEC. 64. He shall make true reports of all cases in which written opinions have been rendered, and of all decisions and rescripts of the court which he may deem to be important and useful, and also all such matters as the court may order to be reported.

SEC. 65. He shall once in six months publish all such reports in pamphlet form, to be known as parts of the next volume of Rhode Island Reports, and shall, as often as he has material for a printed volume of not less than six hundred pages, publish the same with an index, in a bound volume, to be known as the Rhode Island Reports.

SEC. 66. He shall deliver one hundred copies of

each of said parts published by him to the secretary of state, who shall make distribution thereof as he is by law required to make of the volumes of Rhode Island Reports.

SEC. 67. Upon the delivery of one hundred copies of each of such parts to the secretary of state, the state auditor shall draw his order on the general treasurer in favor of the reporter for the cost of the same.

SEC. 68. Whenever the reporter shall publish an edition of a volume of reports, he may retain for his own use twenty-five copies. The remainder of the edition he shall deliver to the secretary of state, and shall assign to the secretary of state, for the use of the state, the copyright of the volume, if it shall have been copyrighted. Upon such delivery, and upon such assignment in case of a copyright, the state auditor shall draw his order on the general treasurer in favor of the reporter for the cost of the edition.

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## CHAPTER 7.

### OF COURT STENOGRAPHERS AND ATTENDANTS.

SECTION 69. The supreme court may appoint a secretary who shall hold office during its pleasure and shall perform such duties as may be required by the court. All court attendants, when on duty, shall have the power of police constables.

SEC. 70. The justices of the superior court, or a majority of them, shall appoint six competent shorthand writers for regular service in the superior court, and one or more such writers for occasional service therein in the absence of other appointees, who shall be known as court stenographers. They

*Cap 1420*  
*Jan 07*



shall serve during the pleasure of the court, and where designated by the presiding justice. All books, papers, and supplies necessary for their use shall be furnished by the state, and the note books used by them shall be the property of the state and be deposited with the clerk of the court in Providence county.

SEC. 71. Such stenographers shall report stenographically the proceedings in the trial of every action or proceeding, civil or criminal, in the superior court, and shall receive as compensation therefor a sum not exceeding six dollars per day, to be allowed by said court and paid by the general treasurer upon the order of the state auditor. Each stenographer shall also, upon the order of any justice of the court, transcribe his report to be filed with the papers in the case, and shall receive a reasonable compensation therefor, not exceeding ten cents for each one hundred words thereof, to be allowed by such justice and to be paid in the manner aforesaid. He shall also make a transcript of the whole or any part of such report upon the written request, filed with the clerk by either party to such action or proceeding, and when completed, and within the time limited by the court for filing the same, but not later than forty days from the date of such request except as provided in section 72, shall immediately deliver the same to the party ordering it or to the attorney of record of said party, and for such service shall be paid a reasonable compensation, not exceeding ten cents for each one hundred words thereof, to be allowed by the court, and in case the transcript is used in subsequent proceedings in said cause the cost of the same may be allowed as a part of the costs.

SEC. 72. In case of sickness or other disability of the court stenographer who made the report of

32 R. 1. 14

29 R. 1. 532-4

ended  
421  
Jan. '09.

29 R. 1. 532-4

32 R. 1. 14

the evidence and rulings, or for other causes, the superior court may, on motion therefor, and with or without notice, grant an extension of time for filing a transcript of the evidence and rulings beyond the period of forty days allowed by the preceding section.

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## CHAPTER 8.

### OF JURORS AND JURIES.

SECTION 73. All persons over twenty-five years of age who are qualified to vote in the election of the city council of any city or upon any proposition to impose a tax or for the expenditure of money in any town or city, shall be liable to serve as jurors, except as is hereinafter provided.

SEC 74. No citizen, possessing all other qualifications which are or shall be prescribed by law, shall be disqualified for service as grand or petit juror in any court of this state on account of race, color, or previous condition of servitude; and any officer, or other person, charged with any duty in the selection or summoning of jurors, who shall wilfully exclude or fail to select or summon any citizen for any of the causes aforesaid shall, on conviction thereof, be fined not exceeding one hundred dollars.

SEC. 75. The following persons shall be exempted from serving as jurors, namely: the governor, lieutenant-governor, secretary of state, attorney-general, general treasurer, members and officers of the general assembly, state auditor, railroad commissioner, members of the state board of charities and corrections, members of the state board of soldiers' relief, justices of the state and United States courts, clerks of courts,

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sheriffs, deputy sheriffs, town sergeants and constables, the United States marshal for the district of Rhode Island and his deputies, ministers of the gospel, practicing attorneys-at-law, physicians and surgeons, overseers in manufacturing establishments, the president, professors, tutors, librarians, registrar, and students of Brown University, cashiers of banks, schoolmasters, town clerks, one ferryman to each ferry who usually navigates the boat, telegraphic operators, one miller to each grist mill who usually tends the same, the keepers of asylums for the poor in the several towns, all persons over seventy years of age, registered pharmacists and registered assistant pharmacists so long as they continue in business as such, all persons commissioned, engaged, or employed in the service of the United States during their time of service, all persons duly licensed and engaged as undertakers during the time said persons are engaged in said business, all engineers having charge of locomotive engines, stationary engines, or marine engines, all engineers or firewards of the fire departments, and all engineers having charge of steam engines in the several towns and cities, all active members of fire engine, hydraulion, hose, and fire hook and ladder companies who shall have been elected members thereof by towns or cities, and all members of private companies incorporated for similar purposes who shall be exempted from jury duty by their charters, so long as they continue members of such companies: *Provided*, that no person shall be exempted from serving as a juror by reason of his being a member of any fire engine, hydraulion, hose, or fire hook and ladder company, unless at the time of such exemption he is an active member of the fire department of the town where he resides; nor shall any such person be exempt from serving as a juror

when there is a paid fire department of such town, unless he is a member thereof.

SEC. 76. The clerk of every incorporated fire engine, hook and ladder, stationary engine, and hydraulion company shall, within ten days after the annual election of the officers thereof in every year, make return to the town clerk of the town in which any member of such company shall reside, of the names of all the members of such company.

SEC. 77. The clerk of every company incorporated for such purpose, any portion of the members of which, being elected by any village, district, or town, are or may be exempted from serving as jurors, shall annually and within ten days after his election return to the town clerk of the town in which any member of such company shall reside a list of the names of such members as are so exempted and resident in such town.

SEC. 78. Every clerk of a company such as is described in either of the preceding two sections who shall neglect or refuse to make such return within the time limited therein shall forfeit twenty dollars, to be recovered one-half to the use of the person who shall sue for the same and one-half to the use of the town to whose clerk the return should have been made.

SEC. 79. The town council of each town shall, in the month of April in every year, make a list of all persons inhabiting the town, qualified to serve as jurors, not exempted as aforesaid, as they shall think well qualified to serve as jurors, being persons of good moral character, of sound judgment and free from all exception; which list shall contain the name and occupation of each of said persons, and shall be kept on file by the clerk of such town in his office.

SEC. 80. If any town council shall neglect to make

such list of persons in their town liable to do duty as jurors, every member of the council so neglecting shall be fined twenty dollars.

SEC. 81. The clerk of the superior court for each county shall from time to time, as it shall be most convenient for him, but before the first day of June in each year, transmit to the town clerk of each town, in the county or counties for which said court is held, lists of the names of all persons from said town who appear from the records of said court to have actually served on any grand or petit jury impanelled in the court of which he is clerk during the year next preceding said first day of June, and also the names of all persons from said town who have been excused by the court from serving as such jurors for the current year, together with the reasons therefor, and the opinion of the court, if any such has been given, that certain of such persons should be permanently excused from serving as jurors.

SEC. 82. Said clerk shall be entitled to compensation for making such lists at the rate of twenty-five cents for each hundred, and fifteen cents for any fraction of a hundred, names on said lists; and the state auditor shall draw his warrant on the general treasurer for the amount thereof, upon the certificate of said clerk of the total number of such names on said lists.

SEC. 83. The town clerk of each town shall between the first and fifteenth days of June in each year erase from the list of the persons qualified to serve as jurors, made by the town council of said town in the month of April in said year, the names of all persons who appear from the returns of said clerk of said court to have served as jurors as aforesaid within two years next preceding the first day of June in said year, and also the names of such persons appearing



in such returns as in the opinion of the court should be permanently excused from serving as jurors.

SEC. 84. The town council in each town shall in each year, after the fifteenth day of June and before the second Monday of July, and thereafterwards during the year and before the following fifteenth day of June, as often as may be necessary to carry out the provisions of this chapter, hold a meeting for the purpose of drawing grand and petit jurors. The names of all remaining persons on said lists shall be written on separate pieces of paper and placed in a box provided for that purpose by each town, which box shall be kept locked by the town clerk in his possession. And at such meetings the town councils shall draw from said box the names of persons to serve as grand jurors and as petit jurors for said court for said county as hereinafter provided. The drawing shall be by lot and by the presiding officer of the town council, who shall read aloud each name as drawn, and immediately pass the piece of paper containing such name to the other members of the town council to be read aloud by each of them, and the town council shall not excuse from serving any legally qualified person whose name is drawn.

SEC. 85. There shall be drawn at such meetings of the town councils held before the second Monday in July in each year in the county of Newport sixty grand jurors and one hundred and twenty-eight petit jurors, who shall be drawn from the several towns as follows: from Newport, thirty-nine grand jurors and eighty-four petit jurors; from Portsmouth, four grand jurors and eight petit jurors; from Jamestown, two grand jurors and four petit jurors; from Middletown, two grand jurors and five petit jurors; from Little Compton, three grand jurors and six petit jurors; from Tiverton, six grand jurors and twelve

petit jurors; and from New Shoreham, four grand jurors and nine petit jurors.

SEC. 86. There shall be drawn at such meetings of the town councils held before the second Monday of July in each year in the counties of Providence and Bristol ninety-six grand jurors and ten hundred and sixty-four petit jurors, who shall be drawn from the several cities and towns as follows: from Providence, forty-two grand jurors and four hundred and forty-four petit jurors; from Smithfield, one grand juror and ten petit jurors; from Scituate, two grand jurors and twenty-five petit jurors; from Glocester, one grand juror and fourteen petit jurors; from Cumberland, three grand jurors and thirty-three petit jurors; from Cranston, five grand jurors and fifty-five petit jurors; from Johnston, two grand jurors and eighteen petit jurors; from North Providence, one grand juror and fourteen petit jurors; from Foster, one grand juror and eleven petit jurors; from Burrillville, three grand jurors and thirty-three petit jurors; from Pawtucket, fourteen grand jurors and one hundred and fifty-five petit jurors; from East Providence, three grand jurors and forty-five petit jurors; from Woonsocket, six grand jurors and seventy petit jurors; from Lincoln, two grand jurors and twenty-five petit jurors; from North Smithfield, one grand juror and nine petit jurors; from Central Falls, four grand jurors and forty-four petit jurors; from Bristol, three grand jurors and twenty-nine petit jurors; from Warren, one grand juror and nineteen petit jurors; and from Barrington, one grand juror and eleven petit jurors.

SEC. 87. There shall be drawn at such meetings of the town councils held before the second Monday of July in each year in the county of Washington sixty grand jurors and one hundred and thirty-six

petit jurors, who shall be drawn from the several towns as follows: from Westerly, fifteen grand jurors and thirty-three petit jurors; from North Kingstown, twelve grand jurors and twenty-six petit jurors; from South Kingstown, thirteen grand jurors and twenty-eight petit jurors; from Charlestown, four grand jurors and nine petit jurors; from Exeter, three grand jurors and seven petit jurors; from Richmond, three grand jurors and eight petit jurors; from Hopkinton, seven grand jurors and seventeen petit jurors; and from Narragansett, three grand jurors and eight petit jurors.

SEC. 88. There shall be drawn at such meetings of the town councils held before the second Monday of July in each year in the county of Kent sixty grand jurors and one hundred and twenty petit jurors, who shall be drawn from the several towns as follows: from East Greenwich, six grand jurors and twelve petit jurors; from Warwick, thirty-six grand jurors and seventy-three petit jurors; from West Greenwich, three grand jurors and five petit jurors; and from Coventry, fifteen grand jurors and thirty petit jurors.

SEC. 89. Whenever additional grand or petit jurors are required to be drawn, the superior court shall direct the clerk thereof to notify the town clerks of the several towns in the county or counties for which said court is holden of the number of such additional jurors required from each of such towns, and thereupon the town councils of such towns shall hold meetings forthwith for drawing such jurors. The court directing the drawing of such additional jurors shall require them to be drawn from the several towns as near as may be in the same proportion provided for in the annual drawing of jurors.

SEC. 90. The names drawn at any meeting for



drawing jurors shall immediately be entered on a book which shall be kept by the town clerk for that purpose, the grand and petit jurors being kept separate. Such entries shall be made in the presence of the town council, who shall attest with their signatures the correctness of the list as entered, and the town clerk shall at once send a list of said names to the clerk of the superior court for the county.

SEC. 91. The persons whose names are so drawn at said meeting held between the fifteenth day of June and the second Monday of July shall be liable to serve as grand and petit jurors, respectively, at any time before the second Monday of the July of the following year, whenever notified to appear before the court as hereinafter provided; and the persons whose names are so drawn at any other such meeting under the provisions of this chapter shall be liable so to serve at any time before the second Monday of July following the date of such drawing.

SEC. 92. From time to time, as occasion may require, the superior court shall direct notices to be sent by the clerk thereof to the town clerks of the several towns of the county or counties for which said court is holden that a certain number of grand or petit jurors are required and the time and place at which they are required to attend, which notices shall be served upon said town clerks by a sheriff or by a deputy sheriff, who shall make return of such service to said court; and every town clerk, on receiving such notice, shall select from the list of jurors drawn as aforesaid, in the order in which said names appear thereon, so many names as may be required, and shall issue notifications to the town sergeant or any constable of the town where the jurors reside, under the seal of the town council and hand of the clerk, designating therein who are grand jurors and

who are petit jurors, and the time and place at which the jurors are required to attend.

SEC. 93. The town sergeant or constable shall forthwith make service of the notification received by him, upon the persons named therein as jurors, by delivering to each of them, or by leaving at their last and usual place of abode, a notice substantially in the following form:

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

SC.

To

Greeting:

You are hereby notified that you have been drawn as a                    juror for the superior court for the county (or counties) of                    , and you are required to attend the said court to be holden at on the                    day of                    , at                    o'clock in the forenoon.

Sergeant.

Constable.

SEC. 94. Such notification, when served, shall be returned forthwith by the officer serving the same to the clerk of the court for which the jurors were drawn. The sergeant or constable shall be paid fifty cents out of the town treasury for warning each person.

SEC. 95. Every officer charged with a notification to any person drawn as juror, who shall neglect to serve and return the same as herein required, shall for each offence be fined twenty dollars.

SEC. 96. No person shall serve on any grand or petit jury in the courts of this state, unless he shall 28 R. I. 479. have been drawn as hereinbefore provided.

SEC. 97. No person summoned shall be qualified to serve as a juror, who has served as such within

two years next preceding the time when he shall be so summoned; and the court shall, upon calling the person so summoned, inquire of him if he has so served.

SEC. 98. No person summoned as a petit juror shall be required to serve for more than two weeks in any year in which he may be summoned; unless at the expiration of such period of two weeks he shall be actually serving on a jury theretofore impanelled to try an issue then pending and undetermined; in which case he shall continue to serve until such trial is concluded. Every person summoned as a grand juror shall serve as such in the year for which he is summoned for such time as the court may require: *Provided*, that no person serving on a grand jury which has presented its report to the court shall be required to serve again during the current court year.

SEC. 99. No person summoned as a juror shall be excused from serving as such juror, unless on account of his mental or physical disability, or the serious illness of some member of his immediate family; except that jurors either before or during their term of service may be temporarily excused, provided that they be required to serve their term or the remainder thereof, as the case may be, at some time before the second Monday in July following the time when they shall have been so summoned to attend said court.

SEC. 100. Every person duly notified to attend any court as juror who shall not attend as required or give satisfactory excuse to the court for not attending, or shall absent himself therefrom without leave of the court, shall be brought before the court, and upon being adjudged in contempt, shall be fined not less than twenty dollars.

SEC. 101. All fines incurred by jurors and persons

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returned or notified as jurors, under this chapter, shall be levied and collected to the use of the state by warrant of distress from the court, directed to the sheriff or his deputy of the county in which such person dwells or his estate is to be found.

SEC. 102. The person and estate of every juror attending any court in this state shall be exempt from all process in any civil action during the period of his attendance on the court, and for three days next before the time he shall be required to appear and for the three days next after he shall be discharged.

SEC. 103. The service of all process, contrary to the preceding section, shall be void.

SEC. 104. In complaints, indictments, and penal actions for the recovery of any sum of money or other thing forfeited, it shall not be cause of challenge to a juror that he resides or is liable to pay taxes in any town which may be benefited thereby.

SEC. 105. Grand and petit jurors, before acting as such, shall take the oath prescribed for them in the following forms:—

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#### GRAND JUROR'S OATH.

You severally and solemnly swear (*or affirm*) that as members of the grand inquest for the body of the county (*or counties*) of                      you will diligently inquire and true presentment make of all such crimes and misdemeanors cognizable by this court as shall come to your knowledge; the state's counsel, your fellow's and your own, will keep secret; will present no person for envy, hatred, or malice; neither will you leave any person unrepresented for love, fear, favor, affection, or hope of reward; but you will present things truly, as they come to your knowledge, according to the best of your understanding: so help you

God. [*Or*: This affirmation you make and give upon peril of the penalty of perjury.]

PETIT JUROR'S OATH IN CRIMINAL CASES.

You swear (*or*, affirm) that you will well and truly try and true deliverance make between the State of Rhode Island and Providence Plantations and the prisoner (*or*, defendant) at the bar according to law and the evidence given you: so help you God. [*Or*, This affirmation you make and give upon peril of the penalty of perjury.]

PETIT JUROR'S OATH IN CIVIL CASES.

You swear (*or*, affirm) that in all cases between party and party, that shall be committed to you, you will give a true verdict therein, according to law and the evidence given you: so help you God. [*Or*, This affirmation you make and give upon peril of the penalty of perjury.]

SEC. 106. The foreman of every grand jury shall have full power and authority to administer all necessary oaths and affirmations to witnesses who shall be examined before the grand jury.

SEC. 107. No person shall be disqualified to act as a juror in any case in which the state is directly or indirectly a party, by reason of his being a citizen thereof.

SEC. 108. On the day when the petit jurors are summoned to attend at a court in any county for the trial of either civil or criminal cases, the clerk shall cause the name and place of abode of each person summoned as a juror to be written upon a separate paper, all of which papers shall be as nearly as may be of the same size, and shall cause them to be placed in a box provided for that purpose. When a case is

brought on to be tried, the clerk, in open court, shall shake the papers thoroughly, and shall then draw out twelve papers one after the other. If any of the persons whose names are so drawn do not appear, or are excused, or are set aside, the clerk shall draw out other papers until the names of twelve are drawn who appear and are not excused or set aside. The said twelve men shall be duly sworn and impanelled, and shall be the jury to try the issue, and one of them shall be appointed foreman by the court. The names of the jurors so sworn shall be kept by themselves, and, when the verdict of the jury has been recorded or when the jury has been discharged by consent of parties or by leave of court, shall be returned to the box; and this process shall be repeated in each case when an issue is brought on to be tried by the jury; but if an issue is so brought on before the verdict in any other case has been recorded or the jury in such case has been discharged, the court may order a jury for the trial of such issue to be impanelled, by the drawing, in manner aforesaid, of papers from those then remaining in the box.

SEC. 109. The court shall, on motion of either party in a suit, examine on oath a person who is called as a juror therein, to know whether he is related to either party, or has any interest in the cause, or has expressed or formed an opinion, or is sensible of any bias or prejudice therein; and the party objecting to the juror may introduce any other competent evidence in support of the objection. If it appears to the court that the juror does not stand indifferent in the cause, another shall be called in his stead for the trial of that cause.

SEC. 110. Upon motion of the attorney-general or of the attorney for the defendant in a criminal case, the jury impanelled and sworn to serve therein shall



not be permitted to separate until discharged according to law from the further consideration of the case.

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SEC. 111. The grand jury shall attend the superior court at Providence for the counties of Providence and Bristol on the third Monday of September and the first Mondays of December, March, and June of each year. The grand jury shall attend the superior court at Newport for the county of Newport on the first Mondays of October, December, March, and June of each year, and at South Kingstown for the county of Washington on the third Mondays of October, December, March, and June in each year, and at East Greenwich for the county of Kent on the fourth Mondays of September, December, February, and May: *Provided*, that when no person is under recognizance or held to appear before the court at any session in Newport, Washington, or Kent county, and in the opinion of the court it is not necessary that the grand jury should be summoned, no grand jury shall be summoned for that session. The time fixed for the attendance of the next grand jury for any county shall be the return day of all recognizances from the district courts in said county ordered more than seven days prior thereto. The superior court may at any other time summon and impanel the grand jury.

SEC. 112. The grand jury shall consist of not less than thirteen nor more than twenty-three persons, and whenever the attorney-general shall, by motion in writing, make application to any justice of the superior court for a grand jury to consist of twenty-three persons, the motion shall forthwith be granted.

## CHAPTER 9.

## OF DISTRICT COURTS AND THEIR CIVIL JURISDICTION.

SECTION 113: The state shall be divided into judicial districts as follows: The county of Newport shall constitute the first judicial district; the towns of South Kingstown, North Kingstown, Exeter, and Narragansett shall constitute the second judicial district; the towns of Westerly, Hopkinton, Charlestown, and Richmond shall constitute the third judicial district; the county of Kent shall constitute the fourth judicial district; the county of Bristol shall constitute the fifth judicial district; the city of Providence and the town of North Providence shall constitute the sixth judicial district; the town of East Providence shall constitute the seventh judicial district; the towns of Cranston, Johnston, Scituate, and Foster shall constitute the eighth judicial district; the towns of Burrillville, Glocester, and Smithfield shall constitute the ninth judicial district; the city of Pawtucket shall constitute the tenth judicial district; the city of Central Falls and the towns of Lincoln and Cumberland shall constitute the eleventh judicial district; and the city of Woonsocket and the town of North Smithfield shall constitute the twelfth judicial district.

SEC. 114. There shall be a court in each judicial district entitled the district court of the district in which it is established.

SEC. 115. The district court in each judicial district shall be held by the justice now in office until the expiration of the term for which he was elected. Thereafter such court shall be held by a justice who shall be elected by the general assembly in grand committee. In the month of January in the year

1908, and in the month of January in every third year thereafter, the general assembly in grand committee shall elect the justices of the district courts. The justices shall hold office for the term of three years commencing on the first day of February next following their election. No person shall be elected a justice of a district court unless he is a member of the bar of this state.

SEC. 116. The clerks of the several district courts now in office shall hold office until the expiration of the terms for which they were elected. The general assembly in grand committee in the month of January in the year 1908, and thereafter in the month of January in every third year, shall elect a clerk of the district court of the first, fourth, sixth, seventh, eighth, tenth, eleventh, and twelfth judicial districts, respectively. Such clerks shall hold office for the term of three years commencing on the first day of February next following their election. No person shall be elected a clerk of the court of the sixth or tenth judicial district unless he is a member of the bar of this state.

SEC. 117. Every clerk of a district court and every justice of such court whereof no clerk shall have been elected shall, before entering upon the duties of his office, give bond to the general treasurer, with surety or sureties satisfactory to him, in a sum not exceeding three thousand dollars nor less than one thousand dollars, to be determined by the state auditor, with condition faithfully to perform the duties of his office according to law, to record seasonably the judgments and determinations of such court, and to account with the state auditor, and to pay over to the general treasurer, as often as by law required, all fines, costs, and other moneys received by him, and by any assistant justice appointed by such jus-



tice, and also to account with and pay over to the town treasurers of the towns in the judicial district, as often as by law required, all fines and other moneys received by him, and by any assistant-justice appointed by such justice, belonging to or payable to such town: *Provided, however,* that the clerk of the sixth judicial district shall give such bond in the sum of five thousand dollars.

SEC. 118. Every justice, assistant justice, and clerk accepting such office shall, within thirty days after his election or appointment, take the engagement provided in section 5 of chapter 25 of the General Laws, and shall file a written notice of his acceptance, together with proof of his engagement upon his commission, with the secretary of state.

SEC. 119. Whenever any person elected to the office of justice, or of clerk, of a district court shall decline to accept the same, or shall neglect or refuse to give bond, or to file a notice of his acceptance, or to take his engagement, within the time hereinbefore provided, the general assembly, if in session, shall proceed to elect in grand committee, a justice or clerk for the term of the person declining, neglecting, or refusing to qualify as hereinbefore provided; and if the general assembly be not in session, the governor shall appoint a justice or clerk to serve until some person, elected by the general assembly in grand committee, shall be qualified to act.

SEC. 120. Whenever from any cause a vacancy shall occur in the office of justice, or of clerk, of a district court, the general assembly, if in session, shall elect in grand committee, a justice or clerk for the unexpired term of such justice or clerk; and if the general assembly be not in session, the governor shall appoint a justice or clerk to serve until some person, elected by the general assembly in grand

committee, for such unexpired term, shall be qualified to act.

SEC. 121. Whenever a justice or clerk of a district court shall neglect or be unable to serve, or shall become disqualified to serve, and such neglect, inability, or disqualification shall continue for the period of sixty days, the office of such justice or clerk may be declared vacant by the governor.

SEC. 122. Whenever a justice of the district court is unable to serve, or is disqualified, or there is a vacancy in said office, his duties shall be temporarily performed by the clerk of such court, if any there be, who shall constitute such court; and the fact of such absence, inability, disqualification, or vacancy shall be recorded in the records of such court. If the clerk is absent, unable to serve, or disqualified, or there is a vacancy in the office, his duties shall be temporarily performed by the justice thereof. In the district court of the sixth and tenth judicial districts, whenever the justice thereof shall find his docket so crowded that he needs assistance, he may assign certain of the cases on the docket of said court, by written order to be entered on the files of said court, to the clerk thereof to be heard and disposed of by said clerk as though he were justice of said court, and for such purpose and in such cases the powers of a justice of a district court are conferred upon such clerk; and both said justice and said clerk when assigned as aforesaid may sit and hear different causes at the same time and in different places in said district.

SEC. 123. Every justice of a district court having no clerk may, from time to time, appoint a resident of the district for which such court is established, an assistant justice, with power at any time to revoke such appointment, and whenever such justice shall

be absent or shall be unable to serve, or is disqualified, his duties shall be temporarily performed by such assistant justice, who shall receive from the justice of such district as compensation the sum of three dollars for every day he shall hold court. The appointment and revocation shall be recorded in the records of the court and certified by the justice to the secretary of state; and the justice shall also issue to the assistant justice his warrant, by which the assistant justice shall be authorized to perform the duties herein specified, and shall also, whenever he shall revoke such appointment, notify the assistant justice in writing of his revocation.

SEC. 124. In case of the absence, or inability to serve, of the justice of any district court having no clerk, and of the assistant justice of such court, if any shall have been appointed, or of both justice and clerk of any such court having a clerk, all business pending before it shall be deemed to be continued, and shall be in order on the day when said court shall next meet according to law.

SEC. 125. Whenever, for any cause, any district court shall be without a justice, and also without any person qualified to perform the duties of the justice under the provisions of this chapter, any and all business within said district of which a district court has jurisdiction may be begun before and completed by the district court of any adjoining district.

SEC. 126. The district court of every district shall have a seal, which shall have engraved thereon the words DISTRICT COURT OF followed by the name of such district.

SEC. 127. The seal shall be kept by the clerk of such court, or, if there be no clerk, by the justice thereof.

SEC. 128. Whenever any justice, assistant justice,



or clerk acting as a justice of a district court shall be disqualified from sitting in any action or proceeding, civil or criminal, such action or proceeding, if within the jurisdiction of such court, may be brought before and heard and determined by the district court in any adjoining district; and if any action or proceeding, civil or criminal, shall be brought under such circumstances in any district court, such action or proceeding shall be by said court certified to and heard and determined by the district court in such adjoining district as the plaintiff shall select: *Provided*, that such disqualification may be waived by consent of all parties.

SEC. 129. No justice, assistant justice, or clerk acting as a justice of a district court shall sit in the trial of any cause in the event of which he may be interested, or where either of the parties shall be connected with him or his wife by consanguinity nearer than the relationship of second cousin, except by consent of all the parties: *Provided*, that residence and payment of taxes in any town or city, or an interest in common with all the inhabitants of such town or city, shall not exclude such justice, assistant justice, or clerk from sitting in any cause in which such town or city or the inhabitants thereof are interested: *and provided, further*, that the interest which shall disqualify any justice, assistant justice, or clerk from so sitting shall be a beneficial and not a merely technical or nominal interest.

SEC. 130. The clerk, or, if there be no clerk, the justice or assistant justice of every district court, shall keep a docket, and an alphabetical index thereof, of all actions, complaints, or proceedings, either of a civil or criminal nature, that may be entered or had in the court, and shall note in the docket against each case the decision or determination thereof, and all

subsequent proceedings, and the judgment therein, and in all criminal cases the fines or imprisonment to which the defendant may be sentenced.

SEC. 131. He shall record the decisions, judgments, and proceedings of such court in a book to be kept for that purpose.

SEC. 132. He shall tax the costs, including officer's fees, in all cases, civil or criminal, that may be entered, commenced, or pending in such court; and all taxation by the clerk shall be subject to revision by the justice of such court.

SEC. 133. He shall receive all fines and costs in criminal cases, and all court fees in civil cases, and shall account therefor as by law required.

SEC. 134. For any wilful neglect or refusal of the clerk, or justice performing the duties of clerk, to so account, or for any wilful neglect or refusal of any clerk or justice to pay over all fines and costs by him received, he shall be fined fifty dollars for each offence, and also double the amount of fines and costs by him received and so detained.

SEC. 135. The clerk of such court, or, if there be no clerk, the justice thereof, shall not be eligible to be re-elected to office of clerk or justice, unless prior to his re-election he shall have faithfully and seasonably recorded the judgments and proceedings of such court, and shall produce to the general assembly in grand committee a certificate of the clerk of the superior court for the county in which such district is situated that he has faithfully, seasonably, and fully kept and made up said records. And it shall be the duty of the clerk of the superior court to make such examination when thereto requested, and, if said records are so made up, to give such certificate.

SEC. 136. Every district court shall have exclusive original jurisdiction, except as provided in

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section 141 and elsewhere in the statutes of this state, of all civil actions legally brought before it wherein the debt or damages laid in the writ do not exceed five hundred dollars, and also over all actions properly brought within its district for possession of tenements or estates let, or held at will or by sufferance.

SEC. 137. The several district courts shall take and record the declaration of any alien, entitled to make the same, of his intention to become a citizen of the United States.

SEC. 138. Every district court may issue writs of habeas corpus to bring before it any person in jail for trial in any civil or criminal case pending in such court, or to bring in any such person to be examined as a witness in a suit or proceeding, civil or criminal, pending in such court, that the ends of justice may be attained, and for no other purpose.

SEC. 139. Every district court may punish any contempt of its authority by fine or imprisonment or both.

SEC. 140. District courts shall have any special jurisdiction which is or may be conferred by charter or law upon justices of the peace within their respective jurisdictional limits, and may, if no special court exists or is created by charter or law for that purpose, have original jurisdiction of all suits and complaints for offences against the by-laws, ordinances, and regulations of the cities and towns within its jurisdictional limits, whether passed by the cities or towns or under the law by the properly constituted authorities thereof.

SEC. 141. The duties and powers hereby, or by any special act, imposed and conferred on district courts and on justices of the peace may and shall be performed and enjoyed, concurrently with the district courts, by wardens in towns that are author-



ized by their original charters to elect such officers.

SEC. 142. No justice or clerk of a district court shall sell any blank writ by him officially signed, to any person except an attorney at law, or deliver to any person other than an attorney at law any such writ with permission in the absence of such justice or clerk to fill or cause the same to be filled, under a penalty of ten dollars for each offence and of ineligibility as a justice or clerk of a district court for the term of three years next after conviction.

SEC. 143. No justice of any district court shall fill or procure to be filled any civil writ returnable to the court of which he is a justice or clerk, nor appear for nor act as attorney for any party in any civil or criminal case originally brought before said district court, or, on appeal thereof, in any court. Every justice or clerk of any district court who shall violate any provision of this section shall thereupon be disqualified to serve as such officer.

SEC. 144. The district courts of the different districts shall meet at the times and places following, to wit:—

In the first judicial district, at Newport each Tuesday and Friday, and at Tiverton the third Thursday in each month; in the second judicial district, at South Kingstown each Monday, at North Kingstown each Thursday, and at Exeter the third Wednesday in each month; in the third judicial district, at Westerly each Friday, at Charlestown the fourth Saturday in each month, at Hopkinton the second and fourth Thursday in each month, and at Richmond the fourth Wednesday in each month; in the fourth judicial district, at Warwick each Tuesday, at East Greenwich each Thursday, at West Greenwich the third Saturday in each month, and at Cov-

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entry the second and fourth Saturday in each month; in the fifth judicial district, at Bristol each Monday, and at Warren each Thursday; in the sixth judicial district, at Providence each Wednesday and Thursday, and for the transaction of civil business shall be held in the sixth judicial district court-house; in the seventh judicial district at East Providence each Friday; in the eighth judicial district at Johnston each Monday, at Cranston each Wednesday, at Scituate the third Saturday in each month, and at Foster the second Saturday in each month; in the ninth judicial district, at Burrillville each Saturday, at Smithfield each Thursday, and at Glocester each Wednesday; in the tenth judicial district, at Pawtucket each Tuesday and Friday; in the eleventh judicial district, at Central Falls each Monday and Thursday, and by adjournment in the discretion of the court may meet at Lincoln or Cumberland on any day; and in the twelfth judicial district, at Woonsocket each Wednesday and Saturday. Such courts shall meet on each of said days at some regular hour to be fixed by the court; and such days shall be the return days for all civil writs issued from such courts respectively: *Provided*, that such courts shall not sit on legal holidays for the transaction of civil business.

Sec. 145. Whenever in any statute reference is made to justice courts, trial justices, or clerks of the justice courts of the different cities and towns, such statute shall be taken and construed to refer to district courts, justices of district courts, and clerks of district courts, respectively, of the several districts; and whenever in such statute jurisdiction in either civil or criminal matters is conferred on the justice court of any city or town, such jurisdiction shall be exercised by the district court of the district in which such city or town is situated.

SEC. 146. The state auditor shall furnish the district courts with the necessary blanks, books, and supplies, and also with such forms of accounts and returns as he shall think proper and convenient; and the clerks and justices shall make return to the auditor according to law, agreeably to such forms as shall be by him prescribed.

SEC. 147. Said district courts shall have the custody of all the records, books, and papers of the several justice courts heretofore established within the respective judicial districts of the district courts as herein defined, and copies of said records and papers, certified by the justice or clerk of the district court having the custody of the same, under seal, shall be received as evidence in any court in the state with the same effect as if they had been certified to by such justice courts. Said district courts are also authorized to issue executions, under seal, upon judgments rendered by such justice courts with the same effect as if said executions had been issued by the courts in which said judgments were rendered.

SEC. 148. The sheriffs of the several counties are hereby authorized to hire, for the use of the state, from time to time and for terms not exceeding three years, suitable rooms within the jurisdiction of the several district courts, in which the sessions of said courts shall be holden, and may engage competent persons to take care of said rooms, when necessary; and the state auditor is hereby authorized to draw his orders upon the general treasurer from time to time, to pay for the rental of said rooms or for the care thereof, out of any money in the treasury not otherwise appropriated, upon properly authenticated vouchers approved by the sheriffs making said contracts.



## CHAPTER 10.

## OF THE CRIMINAL JURISDICTION OF DISTRICT COURTS.

SECTION 149. Every district court shall be open at all times for the transaction of criminal business.

27 R. 1. 422  
422  
28 R. 1. 472  
SEC. 150. Every district court shall have jurisdiction and cognizance of all crimes, offences, and misdemeanors, including offences against town or city ordinances, if no special court exists or is created by charter or law for that purpose, done or committed within the district in which it is established, punishable by fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or both, and of all other criminal matters which are or shall be declared specially to be within the jurisdiction of such court by the laws of the state, which shall legally be brought before such court, with power to try, render judgment, pass sentence, and award a warrant for execution thereof.

27 R. 1. 422  
422  
SEC. 151. Every district court within the district in which such court is established shall have cognizance over all other crimes, offences, and misdemeanors against the laws of the state other than those in the preceding section mentioned, which shall be done or committed within such district and legally brought before such court, and may cause all persons guilty or suspected to be guilty thereof to be apprehended, examined, bailed or committed to jail, according to law, to answer therefor before the superior court, and the jurisdiction over crimes, offences, and misdemeanors committed on the public waters of the state and within the jurisdiction or cognizance of a district court may be exercised by the district court of any district adjoining such waters.

SEC. 152. Whenever complaint shall be made

to any justice or clerk of a district court, or to any justice of the peace authorized to issue warrants within a district, that any person has within such district threatened to commit any crime or offence against the person or property of another, such justice, clerk, or justice of the peace shall examine such complainant under oath or affirmation, reduce his complaint to writing, and cause the same to be signed by him.

SEC. 153. If the complainant shall then, before such justice, clerk, or justice of the peace, enter into a recognizance in such sum, not exceeding fifty dollars, and with such surety, as the justice, clerk, or justice of the peace shall direct and approve, with condition to prosecute such complaint with effect, or in default thereof to pay the costs that may accrue thereon to the state, such justice, clerk, or justice of the peace shall issue a warrant returnable forthwith, annexing thereto such complaint or reciting the substance of the same therein, directed to the sheriff, deputy sheriffs, town sergeants, and constables in the county in which such district is, and to the like officers in the county in which the accused may be supposed to belong, reside, or be found, and requiring the officer who shall be charged with the service of the same forthwith to apprehend the accused and have him before the district court of the district in which such offence shall be alleged to have been committed.

SEC. 154. Whenever any party accused shall be brought before any such court, the court shall inquire into the truth of the complaint; and if it shall appear that the complaint is true, and that there is reasonable cause to fear that the threat would be carried into execution, the person accused shall be sentenced to enter into recognizance with sufficient surety or sureties, and in such sum as the court shall

direct, with condition to keep the peace towards all the people of this state, and especially towards the person against whom, or against whose property, the threat shall have been made, for a certain time thereafter, not exceeding eleven months, and to pay all the costs of prosecution and conviction.

SEC. 155. Upon complying with such sentence, the accused shall be discharged; but on neglecting so to do, he shall be committed to the jail in the same county, there to remain during the term for which he was sentenced to give such recognizance, and until the costs are paid, and also all the costs of his commitment, or until he shall enter into the recognizance required by such sentence before some justice or clerk of a district court of the same county, or justice of the peace authorized to take bail in the county, and pay the costs as aforesaid.

SEC. 156. Every recognizance taken in pursuance of such sentence shall be certified to the clerk of the superior court for the same county, and filed by the clerk in his office.

28 R. L. 97. SEC. 157. If the district court before which such warrant shall be returned, or any warrant triable before it, upon which recognizance with surety for costs may be by it required, shall not consider the complaint, after trial, to be supported by the evidence adduced, the court shall forthwith discharge the accused, and, as soon as may be, tax the costs that have accrued thereon, including therein the attendance and travel of the witnesses summoned and present or sworn on the part of the complainant, and, if the costs are not paid within ten days, shall issue execution for the same against the complainant and his surety, returnable in twenty days from the date thereof. The costs when collected shall be paid to the clerk, if any there be, or if not, to the jus-



tice and be by him paid out to the several persons having right thereto, or to the general treasurer.

SEC. 158. Whenever any complaint shall be made to such justice or clerk, or to any justice of the peace authorized to issue warrants within the district in which the court shall be established, of the commission of any offence within the district, he shall examine the complainant under oath or affirmation relative thereto, and reduce the same to writing and cause the same to be signed by the complainant.

SEC. 159. Whenever any complaint shall allege the commission of any offence within the jurisdiction of a district court to try and determine, the justice, clerk, or justice of the peace shall require the complainant, unless he be exempted by law, to enter into a like recognizance as is required when complaint is made for any threat.

SEC. 160. The justice, clerk, or justice of the peace may, in all cases of complaint to either of them of the commission of any crime or offence which a district court has not jurisdiction to try and determine, before issuing any warrant on such complaint, require of the complainant surety for costs, as is required in cases which such court has jurisdiction to try and determine.

SEC. 161. Upon the giving of a recognizance with surety in the case where surety is required, and upon the giving of a recognizance without surety where no surety is required, and upon the making of a complaint only where no recognizance is required, the justice, clerk, or justice of the peace, if in his opinion there is probable cause to believe that an offence has been committed, shall forthwith issue his warrant, directed and returnable in the same manner as a warrant issued on a complaint for threats.

SEC. 162. Whenever any agent of the Rhode

Island Society for the Prevention of Cruelty to Children shall make complaint against any person for any of the offences mentioned in chapter 115 of the General Laws, or whenever any agent of the Rhode Island Society for the Prevention of Cruelty to Animals shall make any complaint against any person for any of the offences mentioned in chapter 114, and section 15 of chapter 283 of the General Laws, or whenever the overseer of the poor of any town shall make complaint against any person for the violation of any of the provisions contained in chapter 81 of the General Laws, or whenever the agent of state charities and corrections, or the superintendent of the state institutions in Cranston, or the superintendent of any department of the state reform school, or the warden of the state prison, shall make complaint against any person, such agent or officer shall not be required to enter into any recognizance for costs.

SEC. 163. Whenever any complaint shall be made by the sheriff or any deputy sheriff of any county, or by the chief of police of any city or town, within any district, to the justice or clerk of the district court or to any justice of the peace authorized to issue warrants in the district, against any person for any criminal offence within the jurisdiction of such district court, the sheriff, deputy sheriff, or chief of police shall not be required to give surety for costs, but shall give his personal recognizance, and be liable in his individual capacity therefor; and the justice or clerk of the court or any justice of the peace authorized to issue warrants in the district shall deliver to the sheriff, deputy sheriff, or chief of police all warrants issued by them, or either or any of them, upon any such complaint made by the sheriff, deputy sheriff, or chief of police, and all other processes

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issued by the district court in connection with such complaint and warrant, whether before or after conviction thereon, and the sheriff, deputy sheriff, or chief of police is hereby authorized and empowered to deliver such warrants and other processes as above described to such officer legally qualified to serve the same, as in his judgment and discretion the necessities of the case and the apprehension of criminals may require.

SEC. 164. Whenever any complaint shall be tried before a district court in which the complainant is required to recognize with surety, and the respondent is discharged, the district court shall forthwith tax all the costs for which the complainant is liable; and if the costs are not paid within ten days, execution for the same shall issue against the complainant and his surety returnable in twenty days from the date thereof.

SEC. 165. Whenever any person shall be brought before any district court, charged with any offence which it has not jurisdiction to try and determine, and, after hearing all the evidence adduced in relation thereto, it shall not appear to such district court that the accused is probably guilty of such offence, or of any other offence substantially charged in said complaint, the accused shall be forthwith discharged.

SEC. 166. Whenever any person shall be brought before a district court upon a complaint charging him with an offence which is not within the jurisdiction of the court to try and determine, and it shall appear to the court that the accused is probably guilty, the court shall, if the offence be bailable by it, thereupon require the accused to enter into a recognizance in such sum as the court shall direct, with sufficient surety to be approved by the court, with condition that the accused will appear at the superior



court for the county in which the district lies at the time fixed for the attendance of the grand jury therein which is next after seven days from the day when said recognizance was ordered, and not to depart such superior court without leave, and in the meantime keep the peace and be of good behavior toward all the people of this state; which recognizance shall be forthwith certified as soon as may be by said district court to the court before which the accused shall recognize to appear. Whenever any district court shall require any person to enter into a recognizance for his appearance before it or before any other court, and he shall not give such recognizance, he shall forthwith be committed to the jail in the county in which such district court is, there to remain until he be discharged pursuant to law. If the recognizance required is for the appearance of the accused before the superior court, the fact of such commitment shall be certified forthwith to the superior court before which the accused has been held to appear.

27 R. 1. 425  
29 R. 1. 111  
SEC. 167. Any district court may adjourn any trial or examination pending before it, from time to time, not exceeding fourteen days at any one time, except with the consent or at the request of the accused, and to the same or to a different place in the same district.

SEC. 168. In case of an adjournment, if the accused be charged with any offence not bailable by the district court, he shall, in the meantime, be committed to the jail in the same county; but if bailable, he may give recognizance, in a sum and with surety or sureties to the satisfaction of the court, for his appearance for further examination, and for want of recognizance may be committed to said jail.

SEC. 169. If the person recognized shall not appear according to the condition of such recognizance,

the district court shall record the default and certify the recognizance, with the record of the default, to the superior court for the same county.

SEC. 170. Whenever any person charged with treason against this state, murder, arson, rape, robbery, burglary, perjury, subornation of perjury, or other crime, not within the jurisdiction of a district court to try and determine, shall be recognized or committed for trial at the superior court by any district court, such district court may bind by recognizance, with or without surety, such witnesses as it shall deem material, to appear and testify at the higher court, in case it shall deem it necessary to insure the attendance of such witnesses.

SEC. 171. Every witness who shall refuse to comply with the order of a district court requiring him to give recognizance, whether with or without surety, shall be committed to the jail in the same county, there to remain until he give recognizance or be discharged pursuant to law.

SEC. 172. Whenever a district court upon a criminal complaint shall adjudge a defendant in any criminal complaint probably guilty of an offence, said complaint and all papers connected therewith shall forthwith be certified and be transmitted to the clerk of the superior court for the county in which said district court is established.

SEC. 173. Whenever any person shall be committed to jail, or shall be under recognizance, to answer to a charge of assault or battery, or both, or for any threat of committing an offence against the person or property of another, if the person injured or threatened shall appear before the justice or clerk of the district court who issued the warrant of commitment or took the recognizance, and acknowledge in writing that he has received satisfaction of the in-

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427

jury, or has ceased to fear the execution of the threat, such justice or clerk may, in his discretion, upon payment of all costs that may have accrued, including the board of the prisoner in jail, if committed, discharge the recognizance, or supersede the commitment, by an order under his hand, which order shall be filed with the recognizance, or recorded in the jail-book, as the case may require. Every such order shall forever bar all remedy by civil action for such injury.

SEC. 174. Whenever any justice or clerk of a district court, or any justice of the peace, shall issue his warrant against any person charged with an offence committed in his district, and the person so charged as aforesaid shall escape into, reside, or be in any other county than the one in which such district is, such justice, clerk, or justice of the peace may direct such warrant to each and all sheriffs, deputy sheriffs, town sergeants, and constables within the state, requiring them to apprehend such person and him bring before the district court having jurisdiction of the offence, to be dealt with according to law; and such officers shall obey and execute such warrant, and be protected from obstruction and assault therein as in service of other process.

SEC. 175. Every person who shall be convicted of any crime or offence before any district court shall pay all the costs of his prosecution and conviction, and the payment of the same shall be a part of the sentence; and in case he shall be imprisoned, he shall be kept in imprisonment until such costs are paid or remitted, including also all costs of his commitment.

SEC. 176. In addition to the punishment prescribed by law, the district court may require such person to enter into recognizance, with sufficient surety and in such sum as it shall direct, with con-



dition to keep the peace toward all the people of this state for a certain time thereafter, not exceeding eleven months; and upon the refusal or neglect of such person to comply with such requirement, the same course shall be pursued as is provided on neglecting to comply with sentence in case of threats.

SEC. 177. Every such recognizance shall be forthwith certified to the clerk of the superior court for the same county and filed by said clerk in his office; and in case any person under such recognizance shall fail to perform the conditions thereof, his default shall be recorded and process shall issue against the persons bound in the recognizance, or such of them as the attorney-general shall direct.

SEC. 178. Whenever complaint shall be made on oath or affirmation to any justice or clerk of any district courts that any money, or other thing which is the subject of larceny, has been stolen or embezzled or obtained by any privy or false tokens or any false pretences in writing, with intent to defraud, within this state or elsewhere, and that the complainant believes that the same is concealed in some house or place within the district where such complaint shall be made, and in the complaint particularly described, the justice or clerk, if he be satisfied that there is reasonable ground for such belief, shall, upon the giving by the complainant of recognizance in the sum of fifty dollars, with surety to the satisfaction of the justice or clerk, to indemnify the state against all costs if nothing be found on the warrant, issue his warrant, directed to the sheriff, his deputies, or to either of the town sergeants or constables in the county, commanding them in the name of the state diligently to search the house or place therein described, in the daytime, and to bring said money or thing stolen, if the same shall be found therein, and

the person or persons in whose possession or custody the same shall be, before the district court of such district; which warrant every such officer shall execute.

SEC. 179. Whenever any such warrant shall be returned executed, all the money or other things returned therewith shall be safely kept, according to the direction of the district court, for use as evidence on any trial, and as soon as may be afterwards shall be restored to the owner thereof.

SEC. 180. Whenever any property so recovered shall be used as evidence in any criminal trial, all the costs of the search warrant; together with the costs of keeping the property, shall be taxed in the bill of costs.

SEC. 181. The clerk of every district court shall be authorized to take bail in all complaints bailable before the court of which he is clerk; and further, the justice of the district court in each of the several districts shall from time to time appoint, with power to revoke such appointment, from the qualified justices of the peace within each town in such district, a justice of the peace who shall be authorized to take bail in all complaints bailable before such district court, and in default of bail to commit to jail in the same county all respondents arrested on such complaints, and such justice shall authorize one or more of the justices of the peace so appointed by him to issue warrants, returnable to the district court of such district, for any offence for which by law a justice or a clerk of a district court may issue a warrant, and all warrants so issued, and all warrants upon which bail is taken or commitments are made as aforesaid, shall be forthwith returned to such district court: *Provided*, that such justices of the peace shall

not in any case or for any purpose have the power to issue search warrants.

SEC. 182. Such appointments and revocations shall be recorded in the records of such court and certified, by the justice making the same, to the secretary of state, and said justice shall also issue to such justice or justices of the peace his warrant under the seal of said court, by which such justice or justices shall be authorized to perform the duties herein specified, and shall also whenever he shall revoke such appointment notify such justice of the peace in writing of such revocation. Justices of the peace appointed to issue warrants shall sign all warrants by them issued as "Justice of the peace authorized to issue warrants."

SEC. 183. Every justice of a district court having no clerk, and every clerk of a district court, shall, between the first and fifteenth days of February, May, August, and November in each year, make an itemized return in writing to the town treasurer of every town in the district in which such court is established or takes jurisdiction, of all fines by him received during the preceding quarter, which or part of which shall be due such town, and of costs by him paid out of money belonging to such town, also the amount and circumstances of all such fines by him received and costs by him paid not included in any previous return, which return, if made by the clerk of a district court, shall be certified by the justice of said court. The justice or clerk making such return shall immediately thereafter pay to the town treasurer the balance of all moneys in his hands belonging to such town.

SEC. 184. All costs taxed by said courts in criminal prosecutions, which by law any town is or may be required to pay, may be paid by such justice or clerk



to the several persons entitled to the same, out of fines in his hands belonging to the town: *Provided, however,* that fines by him received which are by law to be applied to the support of the public schools shall not be used in the payment of such costs.

SEC. 185. Whenever such justice or clerk shall vacate his office he shall render account and pay over any money which may be due from him, as such justice or clerk, to such town within ten days thereafter.

SEC. 186. Every justice or clerk who shall neglect or refuse to account with the town treasurer as herein required, or to pay over to him all moneys due such town at the time when the same ought to be paid, shall forfeit thrice the amount of the moneys so withheld or not paid, to be recovered by an action of debt for the use of the town.

SEC. 187. The town treasurer of any town in the district in which the district court is established or takes jurisdiction shall have access at all times to all books and papers in the office of such district court, and may examine the same for the purpose of verifying the returns of the justice or clerk.

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## CHAPTER 11.

### OF SHERIFFS, DEPUTY SHERIFFS, AND JAILERS.

SECTION 188. No person shall be eligible to the office of sheriff who shall, at the time of his election, be a member of the general assembly, or who shall not at such time be an inhabitant of the county for which he shall be elected.

SEC. 189. Every person elected sheriff shall, previous to entering on the duties of his office, give bond to the general treasurer in the sum of twenty-five

thousand dollars, in form approved by the attorney-general, with some surety company authorized to do business in this state as surety, or with two other sufficient sureties.

SEC. 190. Every sheriff may appoint as many deputies, being inhabitants of the county and not being members of the general assembly, as he may deem necessary for his assistance in the due performance of the duties of his office.

SEC. 191. Every sheriff, excepting the sheriff of the county of Providence, may appoint a jailer or keeper of the jail in his county.

SEC. 192. The appointment of every deputy and of every jailer shall be in writing, under the hand and seal of the sheriff, and shall be lodged to be recorded in a book to be kept for that purpose in the office of the clerk of the superior court for the county for which he is appointed, before he shall enter on the duties of his office.

SEC. 193. Every deputy and every jailer shall give bond with sufficient surety or sureties to the sheriff appointing him, in a sum satisfactory to the sheriff, not less than five thousand dollars, for the faithful execution of his office according to law.

SEC. 194. Every sheriff may appoint a special deputy for the service of any writ or process to him directed, provided the appointment be written upon the back of such writ or process, and such deputy be sworn, before some person authorized to administer oaths, duly and faithfully to execute such writ and process, and a certificate of such engagement be indorsed thereon.

SEC. 195. Every sheriff shall be responsible and accountable for any neglect or misfeasance in office of his deputies or jailer, and in all cases where any person shall be entitled to an action for any neglect

or misfeasance in office of any deputy sheriff or jailer he may bring the same either against the sheriff appointing him, or against such deputy or jailer, or he may join them both together as parties defendant to such action.

SEC. 196. Any sheriff may revoke any deputation by him given, provided such revocation be entered in the book for recording deputations and appointments as aforesaid.

SEC. 197. Any person injured by the breach of the bond of any sheriff, may after recovering judgment against the sheriff, his executors or administrators, in an action brought for the default, misfeasance, or nonfeasance of such sheriff or his deputy or jailer, cause a suit to be instituted upon such bond, at his own cost, in the name of the general treasurer, to his own use.

SEC. 198. Any person injured by the breach of the bond of any deputy sheriff or jailer may, after recovering judgment against such deputy sheriff or jailer, his executors or administrators, for the default, misfeasance, or nonfeasance of such deputy sheriff or jailer, cause a suit to be instituted upon the bond of such deputy or jailer at his own cost, in the name of the sheriff, to his own use.

SEC. 199. The general treasurer shall deliver an attested copy of the bond of any sheriff, and every sheriff shall deliver a copy of the bond of any deputy-sheriff or jailer, filed in his office to any person applying and paying the sum of one dollar for the same, and such copy shall be received as evidence in any case, but if the execution of the bond shall be disputed, the court may order the original to be brought into court by a proper subpoena for that purpose, to be served on the general treasurer or sheriff.

SEC. 200. In every suit on such bonds, the dec-



laration shall set forth the condition of the bond and assign the breach or breaches relied upon in the action, and judgment in such suit shall not be a bar to any other action on such bond assigning other breaches.

SEC. 201. In such suit, if the plaintiff shall recover, judgment shall be rendered in favor of the general treasurer or sheriff, as the case may be, for the use of the person alleged in the writ and declaration to be injured by the breach or breaches assigned, and such person shall be deemed and taken, for all purposes whatsoever, to be the plaintiff in the suit.

SEC. 202. If the defendant shall recover judgment for costs, execution shall issue therefor against the person for whose use the suit is brought, and not against the general treasurer or sheriff, and the surety for costs of such person, if any there be, shall be liable for such costs as such sureties are in other cases.

SEC. 203. The sheriffs shall attend the general assembly when holden within their respective counties. The sheriff of Providence county shall direct such number of deputy sheriffs to attend the sessions of the supreme court as may be necessary. The sheriffs of the several counties shall, by themselves or their deputies, attend the sessions of the superior court held within their respective counties and such sessions of the district court as required by law.

SEC. 204. The sheriffs shall furnish the general assembly when sitting in their respective counties with copies of the laws and other proceedings of the general assembly which shall from time to time be transmitted to them as by law provided, and shall deliver commissions, proclamations, acts and resolves, and all public acts to the persons to whom directed in their respective counties; and they shall

be allowed annually for the expense of delivering said commissions, proclamations, and acts and resolves the sums herein specified, to wit: the sheriff of the county of Newport, twelve dollars; the sheriff of the county of Providence, seventy-five dollars; the sheriff of the county of Washington, fifteen dollars; the sheriff of the county of Bristol, six dollars; the sheriff of the county of Kent, ten dollars.

SEC. 205. The sheriffs of the several counties shall annually, on or before the first Monday of January, return to the office of the secretary of state all civil commissions remaining in their hands unclaimed, and in default thereof shall be fined one hundred dollars.

SEC. 206. The sheriff of the county of Providence, with as many of his deputies as he may deem necessary, shall attend the celebration of the annual commencement of Brown University and shall preserve peace and good order and decorum during the same.

SEC. 207. The sheriff of every county, by himself or his deputy, shall serve and execute all writs and precepts to him directed, within his county or wherever he may be authorized by law, or by special order of the court issuing such writ or precept.

SEC. 208. \* Any sheriff or other officer duly authorized may serve any writ or other process, whether of a civil or criminal nature, within any part of the waters of Narragansett bay, and within any waters not more than one marine league from the sea-shore of the state at high-water mark.

SEC. 209. Every sheriff, deputy sheriff, or jailer, in the due execution of his office, may command all necessary aid and assistance in the execution thereof; and every person who, whenever so required, shall refuse or neglect to give such aid and assistance shall be fined not exceeding twenty dollars.

SEC. 210. Every officer to whom any writ or precept lawfully issued shall be delivered shall execute the mandates therein contained as commanded and shall make return of his doings thereon. In case he be unable to execute such mandates, he shall set forth the reason of his failure in his return.

SEC. 211. Every sheriff or deputy sheriff who shall neglect or refuse to serve any process issuing from lawful authority, directed to him to serve and execute (having in all civil causes, paid or tendered unto him his legal fees, if he demand the same, for serving and executing such process), shall be liable to the party aggrieved for such damages as he may have sustained by such neglect or refusal.

SEC. 212. In case of the death of any sheriff, his deputy or deputies and jailer shall continue in office, unless removed as herein provided, and shall execute the duties of the office, in the name of the deceased, until another sheriff shall be appointed and sworn and shall have given bond as before prescribed, and the neglect or misfeasance of such deputies and jailer in the meantime, as well as before, shall be a breach of the condition of the bond given as before directed by the sheriff who appointed them.

SEC. 213. The executors or administrators of such deceased sheriff shall have the like remedy for the defaults and misfeasances in office of such deputy or deputies and jailer, during such interval, as the deceased sheriff would have been entitled to if he had continued in life and in the exercise of his office until his successor was appointed and duly qualified.

SEC. 214. Every sheriff whose office shall become vacant by resignation or removal into any other county may, notwithstanding, officiate as such until his successor shall be duly qualified to act, and his



deputies and jailer may also exercise their respective offices during such period.

SEC. 215. Every keeper of any jail shall keep a book in which shall be entered the names of all criminals committed under the laws or authority of the state and of the United States, the times of their commitment, the times when they were discharged, and the manner in which they were discharged, as well as the circumstances attending their discharge.

SEC. 216. Every keeper of any jail, except the jail in the county of Providence, shall, on ceasing to hold said office, deliver to the sheriff of the county in which he shall be such keeper, all books, notes, obligations, and other papers in his possession pertaining to said office of jailer, and if he shall unlawfully refuse to deliver the same to the sheriff on his demand therefor, he shall be fined not less than fifty dollars nor more than five hundred dollars.

SEC. 217. All books, notes, bonds, obligations, and other papers which sheriffs shall receive pursuant to this chapter shall by them be delivered over to their respective successors in office, as papers and documents pertaining thereto, and every sheriff unlawfully refusing to deliver the same on demand shall be fined not less than fifty dollars nor more than five hundred dollars.

SEC. 218. Whenever any person shall die in any jail the jailer shall, after an inquest has been held on the body of the deceased person, deliver the body to his relatives or friends if they request it; and if no application be made for the body, the jailer shall bury the same in the common burying-ground, and the expenses thereof shall be paid out of the estate of the deceased, if any there be, and if none, then by the town in which the deceased person had

a legal settlement, if within the state, otherwise the expenses shall be paid out of the general treasury.

SEC. 219. The keepers of the jails in the several counties shall, on or before the first day of each session of the superior court for their respective counties, report to said court, in writing, the name of every person in custody at the suit of the state, the cause for which he was committed, the time of commitment, and by what court or magistrate, and, as far as he can ascertain, the time and place of birth and previous residence of each prisoner, whether married or not, whether he has children or not, and where his family reside.

SEC. 220. Any deputy sheriff or jailer may be removed for misdemeanor in office by the supreme court or by the superior court, sitting for the county to which such officer belongs, upon complaint made.

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## TITLE II.

### OF ACTIONS, OF PLEADING AND PRACTICE, AND OF PROCEDURE IN COURTS.

#### CHAPTER 12.

##### OF CIVIL ACTIONS.

SECTION 221. All actions at law and suits in equity which concern the realty, or any right, easement, or interest therein, or the possession thereof, all actions of trespass for breaking and entering the close of any plaintiff, and all actions in which the title to real estate may be tried and determined, shall, if brought in the superior court, be brought in the court for the county, and if brought in the district

court, in the district where the land lies, and whenever the land consists of an entire tract lying partly in two or more counties or districts, such actions, if brought in the superior court, may be brought in such court for any county, or if brought in a district court, in any district where a portion of such land lies.

SEC. 222. All other actions and suits, if brought in the superior court, shall be brought in the court for the county, or if brought in the district court shall be brought in the district, in which some one of the plaintiffs or defendants shall dwell, or in the superior court for the county or in the district court for the district in which the defendant or some one of the defendants shall be found; and if no one of the plaintiffs or defendants shall dwell in the state, such action, if brought in the superior court, may be brought in the court for any county, or if in a district court, in any district.

SEC. 223. Personal or transitory actions and suits brought by or against corporations, if brought in the superior court, shall be brought in the court for the county, and if brought in a district court shall be brought in the district, in which the other party or some one of the other parties dwell, or in the court for the county or in the district court for the district in which the defendant or some one of the defendants shall be found, or in which the corporation is located by its charter, or if not located by its charter, in which the annual meetings of the corporation are required to be, or if not required to be, are actually holden.

SEC. 224. If no one of the plaintiffs or defendants dwell within the state, and a corporation established out of the state be a party, such personal or transitory actions or suits by or against it may, if brought in



the superior court, be brought in the court for any county, or if in a district court, in any district.

SEC. 225. All actions and suits brought contrary to the provisions of section 221 shall be abated, and any contrary to the preceding three sections may be abated.

SEC. 226. No action shall be brought,—

*First.* Whereby to charge any person upon any contract for the sale of lands, tenements, or hereditaments, or the making of any lease thereof for a longer time than one year;

*Second.* Whereby to charge any person upon any agreement made upon consideration of marriage;

*Third.* Whereby to charge any trustee under any express trust, or any executor or administrator, upon his special promise to answer any debt or damage out of his own estate;

*Fourth.* Whereby to charge any person upon his special promise to answer for the debt, default, or miscarriage of another person;

*Fifth.* Whereby to charge any person upon any agreement which is not to be performed within the space of one year from the making thereof; 29 B. 1582

Unless the promise or agreement upon which such action shall be brought, or some note or memorandum thereof, shall be in writing, and signed by the party to be charged therewith, or by some other person by him thereunto lawfully authorized.

SEC. 227. In addition to the causes of action and actions which at common law survive the death of the plaintiff or defendant therein, the following causes of action or actions shall also survive:

*First.* Causes of action and actions of waste.

*Second.* Causes of action and actions of replevin and trover.

*Third.* Causes of action and actions of trespass

and trespass on the case for damages to the person or to real and personal estate.

SEC. 228. All the causes of action and actions in the preceding section mentioned may be originally brought and prosecuted by and against executors and administrators; and if brought or prosecuted by or against any person in his lifetime, may be prosecuted or defended by his executor or administrator.

SEC. 229. Whenever any of said causes of action or actions are, originally or by survival, brought or prosecuted by or against the executor or administrator of the party originally liable, the plaintiff shall be entitled to recover only the value of the goods taken, or the damage actually sustained, without any vindictive or exemplary damages, or damages for any alleged outrage to the feelings of the injured party.

SEC. 230. Actions of ejectment shall survive the death of the plaintiff or defendant, and may be prosecuted or defended by the heir, devisee, executor, or administrator of the deceased party, as the right may descend or vest.

SEC. 231. In no case shall the title to real estate be settled or affected, except so far as relates to the case on trial, if and so far as the same shall be prosecuted or defended by an executor or administrator.

SEC. 232. Claims for damages on account of the laying out of highways through lands of the claimants, and appeals from proceedings in laying out highways, shall survive the death of the claimant and appellant; and the executors, administrators, heirs, and devisees of the claimant or appellant may, jointly or severally, according to their interest, prosecute such claim or appeal in any stage of the

proceedings. In case of an appeal by the executors, administrators, heirs, or devisees, the proceedings shall be taken in the manner prescribed in chapter 40 of this act; but the same shall be claimed within eighty days after the determination appealed from, and all other periods, excepting as to notice, mentioned in said chapter shall be increased by forty days.

SEC. 233. No action, suit, or proceeding, commenced or pending by or against any officer, receiver, or trustee, in his capacity as such, shall abate in consequence of his death, or of his ceasing to hold his office, place, or trust, within one year thereafter; but at any time within one year thereafter his successor in the office, place, or trust may come in and take upon himself, or he may be summoned in to take upon himself, the prosecution or defence of such action, suit, or proceeding.

SEC. 234. Whenever the death of a person shall be caused by the wrongful act, neglect, or default of another, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who, or the corporation which, would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to a felony. Every such action shall be brought by and in the name of the executor or administrator of such deceased person, whether appointed or qualified within or without the state, and the amount recovered in every such action shall one-half thereof go to the husband or widow, and one-half thereof to the children of the deceased, and if there be no



children the whole shall go to the husband or widow, and, if there be no husband or widow, to the next of kin, in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate: *Provided*, that ~~every~~ such action shall be commenced within two years after the death of such person. If there is no executor or administrator, or if, there being one, no action is brought in his name within six months after the death, one action may be brought in the names of all the beneficiaries, either by all, or by part stating that they sue for the benefit of all, and stating their respective relations to the deceased: *Provided*, that if all do not bring suit, only those bringing it shall be responsible for costs; but judgment shall be for the benefit of all, and shall be entered as several judgments for each in his proportion as aforesaid, and executions thereon shall issue in favor of each respectively: *Provided, further*, that if action be brought by the beneficiaries, no action shall thereafter be brought by the executor or administrator. There shall be but one bill of costs in favor of the plaintiffs, which shall enure equally for the benefit of those bringing the suit, and of them only.

SEC. 235. In order to maintain any action given in and by the preceding section, it shall not be necessary to first institute criminal proceedings against the defendant.

SEC. 236. Whenever any person shall suffer any injury to his person, reputation, or estate, by reason of the commission of any crime or offence, he may recover his damages for such injury, either in an action of trespass, or in an action of the case, against the offender; and it shall not be any defence to such action that no criminal complaint for such crime or offence has been made; and whenever any person

shall be guilty of larceny, he shall be liable to the owner of the money or articles taken for twice the value thereof, unless the same be restored, and for the value thereof in case of restoration.

SEC. 237. Unless otherwise provided in the contract, upon the death of any joint contractor his representatives may be charged in the same manner as such representatives might have been charged if such contract had been several instead of joint: *Provided*, that the plaintiff shall first exhaust the partnership estate if such joint contract is a partnership contract.

SEC. 238. No judgment, without complete satisfaction, rendered against a part only of the defendants in any action upon a joint contract, shall be a bar to any future action on said contract for any unsatisfied balance due, against such of the defendants upon whom or whose estate the writ in the original action shall not have been served.

SEC. 239. Any innkeeper who shall provide a suitable safe in his house, for the safe keeping of any money, jewels, or ornaments belonging to his guests, and shall notify them thereof by posting a printed notice conspicuously in the rooms that such safe has been provided for said purpose, shall not be liable for the loss of any money, jewels, or ornaments, by theft or otherwise, which any guest who has neglected to deposit the same in such safe may sustain.

SEC. 240. Whenever in any action the plaintiff is in doubt as to the person from whom he is entitled to recover, he may join two or more defendants with a view of ascertaining which, if either, is liable; and the plaintiff shall recover only against such of the defendants as may be liable therein, and such as are not liable shall recover such costs, single or double, as the court in its discretion shall deem proper.

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SEC. 241. The plaintiff may join as defendants in the same action all or any persons severally or jointly and severally liable in any contract or specialty, including any or all of the parties to a bill of exchange or a promissory note, and in every such action the judgment shall be rendered against such of the defendants only as shall be liable therein, and such, if any, as shall not be liable shall recover costs, as provided in the preceding section, against the plaintiff; and the court may, upon motion of a defendant in any such case, consolidate all pending actions or suits brought against the several parties to such contract or specialty, or may order other parties to the contract or specialty to be made defendants, and to be summoned in to answer to such action or suit; and in all such cases, while the property of a surety, indorser, or drawer may at any time be attached, that of the promissor, acceptor, or principal, properly before the court, if any he has within its jurisdiction, if not attached on the original writ, may be attached on mesne process or execution and shall in all cases be first applied in the satisfaction of any judgment recovered therein.

SEC. 242. In any action at law pending in the superior court the plaintiff or the defendant may plead any equitable defence, upon which an unconditional judgment can be rendered for the party pleading the same: *Provided*, that if such case be brought from a district court, such equitable plea shall be filed as other pleas are required to be filed in cases brought from district courts.

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SEC. 243. No action shall be defeated by the non-joinder or misjoinder of parties. New parties may be added and summoned in and parties misjoined may be dropped, by order of the court at any stage of the cause, as justice may require, in the discretion



of the court, and upon such terms as the court may order. When any action has been commenced in the name of the wrong party as plaintiff, the court, if satisfied that it has been so commenced through mistake, and that it is necessary for the determination of the real matter in dispute so to do, may allow any other party or parties to be substituted, or added, as plaintiff or plaintiffs.

SEC. 244. Every new party summoned into a cause shall be allowed a reasonable time, in the discretion of the court, from the time of service of process or citation upon him, to appear and plead within that time if he see fit so to do; and the trial of the cause shall be postponed accordingly. Service of process or citation on such new party shall be made in such manner as the court shall direct.

SEC. 245. No change of parties made by order of the court shall impair any previous attachment of the estate, or arrest of the body, of any defendant remaining in the action, nor impair any bond or bail given by any party remaining either as against himself or his sureties. And in all the above cases, the writ and declaration shall be amended accordingly.

SEC. 246. When a plaintiff has reason to doubt whether his action should be in covenant, debt, or assumpsit, he may bring either action and may join therein counts in covenant, debt, and assumpsit or any of them, and when he has reason to doubt whether the action should be trespass or trespass on the case, he may bring either action and join therein counts in trespass and trespass on the case, or either of them, and the defendant in all such cases shall plead to the several counts according to the practice at common law, and judgment may be entered upon the counts under which the plaintiff may be entitled to recover.

SEC. 247. The plaintiff in any civil action, suit, or proceeding at law or in equity, in which process has been returned to any court, may at any time before the trial or hearing thereof be begun file in the office of the clerk of such court, or if there be no clerk then with the justice thereof, a written notice of discontinuance signed by himself or his attorney, and stating therein the action, suit, or proceeding to be discontinued and the time of filing such notice; and if the action, suit, or proceeding shall have been answered, a copy of such notice shall be given immediately to the defendant or his attorney of record by the plaintiff; and thereupon said court, on its next motion day, or at the next civil session of the district court, shall enter such discontinuance, as of course, and as of the day of filing such discontinuance, unless it shall appear that the rights of some other party thereto, or interested therein, will be impaired by such discontinuance; and no costs accruing after such discontinuance by the court shall be taxable for the defendant.

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## CHAPTER 13.

### OF THE LIMITATION OF ACTIONS.

SECTION 248. Actions for words spoken shall be commenced and sued within one year next after the words spoken, and not after. Actions for injuries to the person shall be commenced and sued within two years next after the cause of action shall accrue, and not after.

SEC. 249. Actions of trespass, except for injuries to the person, shall be commenced and sued within four years next after the cause of action shall accrue, and not after.

SEC. 250. All actions of account, except on such accounts as concern trade or merchandise between merchant and merchant, their factors and servants, all actions of the case except for words spoken and for injuries to the person, all actions of debt founded upon any contract without specialty or brought for arrearages of rents, and all actions of detinue and replevin, shall be commenced and sued within six years next after the cause of action shall accrue, and not after.

SEC. 251. All actions of debt other than those in the preceding sections specified, and all actions of covenant, shall be commenced and sued within twenty years next after the cause of action shall accrue, and not after.

SEC. 252. If any person against whom there is or shall be cause for any action, hereinbefore enumerated, in favor of a resident of the state, shall at the time such cause accrue be without the limits thereof, or, being within the state at the time such cause accrues, shall go out of the state before said action shall be barred by the provisions of this chapter, and shall not have or leave property or estate therein that can be attached by process of law, then the person entitled to such action may commence the same, within the time before limited, after such person shall return into the state in such manner that an action may with reasonable diligence be commenced against him by the person entitled to the same.

SEC. 253. If any person at the time any such cause of action shall accrue to him shall be within the age of twenty-one years, or of unsound mind, or imprisoned, or beyond the limits of the United States, such person may bring the same, within such time as hereinbefore limited, after such impediment is removed.



SEC. 254. If any person, liable to an action by another, shall fraudulently, by actual misrepresentation, conceal from him the existence of the cause of such action, said cause of action shall be deemed to accrue against the person so liable therefor, at the time when the person entitled to sue thereon shall first discover its existence.

SEC. 255. If any person, for or against whom any of such causes of action shall accrue, shall die before the time limited for bringing action, or within sixty days after the expiration of said time, and the cause of such action shall survive, such action may be commenced by or against the executor or administrator of the deceased person, as the case may be, at any time within one year after the decease of the person so dying, and not afterwards, if barred by the provisions of this chapter.

SEC. 256. If any action, duly commenced within the time limited and allowed therefor in and by this chapter, shall be abated or otherwise avoided or defeated by the death of any party thereto, or for any matter, or if, after verdict for the plaintiff, the judgment shall be arrested, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit as aforesaid; and if the cause of action does by law survive, his executor or administrator may, in case of his death, commence said new action within the said one year.

SEC. 257. Whenever counts in different forms of action are joined in the same declaration, under the provisions of section 246, the limitation of time for commencing suit applicable to the cause of action set out in any count shall be the same as if the action was brought on such count only, and such limitation may be pleaded to such count instead of

to the entire action. The provisions of this chapter shall not apply to any case in which a different time is limited by special provision.

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## CHAPTER 14.

### OF ENTERING ACTIONS AND APPEALS AND OF AMENDMENT AND ABATEMENT.

SECTION 258. Whenever any civil action (except in a district court), or whenever any appeal, shall not be entered according to law, the court to which the same is returnable may, in case of accident, mistake, or unforeseen cause, in its discretion, allow the same to be entered with or without terms: *Provided*, that if the same be not entered according to law, in the first instance, all attachments and arrests made therein shall be thereby vacated.

SEC. 259. No proceeding at law or in equity, original or appellate, shall be deemed to be entered until the necessary papers are properly filed and the entry-fee, if any be required, is paid.

SEC. 260. No summons, writ, declaration, return, process, judgment, or other proceeding in civil causes in any court, shall be abated, arrested, quashed, or reversed for any defect or want of form, but the court shall proceed and give judgment according as the right of the cause and matter in law shall appear unto it, without regarding any imperfections, defects, or want of form in such writ, declaration, or other pleadings, return, process, judgment, or proceeding whatsoever.

SEC. 261. All pleadings which contain the essential averments, according to the rules of the common law or the practice of this state, shall be held good,

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notwithstanding the omission of immaterial matter of prescribed forms; and the court may at any time permit either of the parties to amend any defect in the process or pleadings, with or without terms, in the discretion of the court, or in pursuance of general rules.

SEC. 262. In any case where there are two or more plaintiffs or defendants, if one or more of them shall die, and the cause of action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not be thereby abated, but the death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

SEC. 263. All writs, actions, pleas, processes, precepts, recognizances, and other things whatsoever, returnable or having day in any court shall stand, abide, and continue unto any adjournment made according to law and be holden, deemed, and adjudged to be as effectual and available in law to all intents and purposes as if such court had been holden on the day appointed for holding the same and no adjournment of the same had been made.

SEC. 264. If from any cause any court in this state shall not be holden at the time appointed by law, or to which it may have been adjourned, all business pending therein shall be proceeded with when the court next meets.

SEC. 265. If any assignment day or any motion day occurs on a legal holiday, such assignment day or motion day shall be the following week day.



## CHAPTER 15.

## OF CIVIL PRACTICE IN DISTRICT COURTS.

SECTION 266. In all civil actions in a district court the declaration shall be filed with the writ, at any time before the day and hour when the writ is returnable, or on the return day before the call of the docket, and the return day shall also be known as the entry day, and entry of appearance by the defendant shall be made on said day while the court is in session, excepting as provided in sections 267 and 270.

SEC. 267. In case the writ and declaration shall not be entered as aforesaid, the same may be entered in said court at any time during the return day thereof, by permission of the justice, or officer duly acting as such, upon such terms and conditions as such justice or other officer duly acting as such may deem proper, and with such notice to the defendant as he may prescribe; and thereupon said case shall be continued to the day to which it would have been continued had it been regularly entered and answered, as provided in section 269; and if the said terms and conditions shall be complied with, said defendant shall enter his appearance and plead at such time as the court may order, and the case shall be called for trial on the said day to which it was continued: *Provided, however,* that the defendant shall have a reasonable time in which to answer and plead special pleas.

SEC. 268. The entry of appearance by the defendant in any case in a district court shall be equivalent to filing the plea of the general issue; and if the case be tried in the district court, the defendant shall, on or before the day one week after the re-

turn-day, concisely plead any special defences of law or fact which he may desire to plead. If no special defences be pleaded, the defendant shall be restricted to such matters as may be shown under the general issue, or its equivalent.

SEC. 269. All cases in which entry of appearance by the defendant shall be made as provided in section 266 shall, as of course, be continued two weeks, or to the next civil session of the court, if such next civil session be later than two weeks, except cases for the possession of tenements let, or held at will or by sufferance, which cases shall, as of course, be continued for one week, or to the next civil session of the court, if such next civil session be later than one week; and the trial in all cases, unless other order be made, shall be had on the day to which the case was continued.

SEC. 270. All cases wherein possession of tenements let, or held at will or by sufferance, is sought, in which no entry of appearance by the defendant shall be made as provided in section 266 or 267, shall be defaulted, and judgment shall be entered as of the day of the default, and execution may be issued on the following day, exclusive of Sundays and legal holidays, to run as to costs against the estate, and in default of estate against the body, of the defendant.

SEC. 271. All other cases in which no entry of appearance by the defendant shall be made as provided in sections 266 and 267 shall be continued one week, or to the next civil session of the court if the next civil session be later than one week; and on the day to which such case is continued, such case shall be defaulted, unless the defendant, on application to the justice, and with or without costs as ordered by the justice, shall, within six days after entry day, have entered his appearance and filed any de-

murrers or special pleas which he may desire to plead: *Provided*, that if the sixth day falls on Sunday, the last day for such entering and filing shall be the preceding Saturday. If the defendant shall comply with said conditions, then the case, if continued for one week, shall, on the day to which it was continued, be continued for the further period of one week, and shall be in order for trial on the day to which it was last continued: otherwise, it shall be defaulted as aforesaid. If the defendant shall comply with said conditions, then the case, if continued to the next session of the court where the same occurs later than one week after the return day, shall be in order for trial on the day to which it was continued: otherwise, it shall be defaulted on that day as aforesaid.

SEC. 272. In all civil cases in a district court the plaintiff or defendant may claim a jury trial in writing on the entry day of the writ, and either plaintiff or defendant may claim a jury trial in writing within two days, exclusive of Sundays and legal holidays, after the decision is made: *Provided*, that in all cases for the possession of tenements let or held at will or by sufferance, such claim for a jury trial shall be claimed within six hours after decision is made; *and provided*, that the party claiming such jury trial at the time of claiming the same shall pay all costs; *and provided, further*, that if jury trial is claimed by the plaintiff after decision, and the verdict, judgment, or decision in the superior court, if for the plaintiff, does not exceed the amount awarded him in the district court, he shall recover no costs and shall also pay the defendant's costs; and if on the plaintiff's claim for jury trial the verdict, judgment, or decision, as also the decision in the district court, shall be for the defendant, the defendant shall be entitled to double costs; and if the defendant

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claim the jury trial, and the verdict, judgment, or decision be for the plaintiff for the same or a greater amount than that awarded by the district court, the defendant shall be taxed double costs.

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SEC. 273. If jury trial be so claimed, the case and papers shall, on the next court day of such district court, be certified and forthwith transmitted to the superior court for the county wherein the district court is established, and such case shall be in order for assignment for trial on the assignment day which occurs next after ten days from such certification, but if the case be for tenements let, or held at will or by sufferance, it shall at once be certified to the superior court as aforesaid and shall be in order for assignment forthwith and shall take precedence of other matters on the calendar.

SEC. 274. Every defendant in an action for the possession of tenements let, or held at will, or by sufferance, claiming jury trial shall, in addition to making the payments required by section 272, give bond to the plaintiff, with one or more sureties satisfactory to the district court, to pay all rent or other moneys due or which may become due pending the action under the tenancy, and such damages and costs as may be awarded against him, such bond to be filed with the clerk of the district court, or person acting as clerk, at the time of claiming jury trial.

SEC. 275. In all actions in a district court, where the whole amount is more than five hundred dollars, and the balance stated by the plaintiff does not exceed that sum, he may bring his action for such balance, and shall declare specially thereon, and shall, on the entry of the writ, or afterwards on motion, file his account of debt and credit in said action.

SEC. 276. In all actions for the recovery of money due on any note or other instrument in writing,

which was given originally for five hundred dollars or a larger sum, and which by indorsement or by acknowledgment is reduced to five hundred dollars or under, including principal and interest, suit may be brought before a district court as aforesaid, and judgment may be entered thereon, and execution awarded, in the same manner as though such note or other instrument in writing had been originally given for the sum to which said note or other instrument in writing has been reduced.

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## CHAPTER 16.

### OF CIVIL PRACTICE IN THE SUPERIOR COURT.

SECTION 277. In any action at law originally brought in the superior court, the plaintiff shall file his declaration in the office of the clerk of said court, with his writ, on the return day thereof. With said declaration there shall be filed one copy thereof for the personal use of the defendants.

SEC. 278. The defendant shall file his demurrer or plea within ten days after the entry of the case, or judgment shall pass against him as for a default; excepting that, for cause shown, the time may be extended, with or without terms, in the discretion of the court. With every demurrer or plea there shall be filed one copy for the personal use of the plaintiffs.

SEC. 279. In any case certified to the superior court, on claim for jury trial from a district court, either party within ten days may file in said court such further pleas, legal or equitable, as he may see fit.

SEC. 280. In the superior court for Providence

and Bristol counties the first Saturday in every month, except in vacation, and for Newport, Kent, and Washington counties the first day of each session and motion days in said counties, respectively, shall be known as assignment days. All cases at law originally entered in said court shall be in order for assignment for trial or other disposition on the assignment day which occurs next after twenty days from the entry thereof.

SEC. 281. Prior to the assignment day, counsel by agreement may assign any case to a given day for trial, with the assent of said court, otherwise the court, on the assignment day, shall assign the same for trial or make other disposition thereof.

SEC. 282. In all actions at law and civil appeals pending in the superior court, the parties therein may waive in writing the right of trial by jury, and in such cases the court sitting without a jury shall try and determine the issues in said case, both as to the law and as to the facts, and render a decision therein. In actions so tried the court shall, upon request of any party, make special finding upon any issue of fact and special ruling upon any question of law arising in the cause.

SEC. 283. If pleadings are not completed on assignment day, the court may make such order concerning the closing of the same, and impose such costs and conditions, as it may deem proper; and prior to such assignment day motions relating to pleadings and other motions may be made on any motion day, upon notice thereof according to law.

SEC. 284. All motions, and all questions of pleading or practice, not arising in the trial of a case, all demurrers, all defaulted cases in the superior court, shall be heard and disposed of by the court for the county in which the action is pending: *Provided*,



that all such matters arising in Newport, Kent, or Washington county may, when the court is not sitting in said county, be heard and disposed of in Providence.

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## CHAPTER 17.

### OF CIVIL PRACTICE COMMON TO THE SUPERIOR AND DISTRICT COURTS.

SECTION 285. In case any action, commenced by attachment of real or personal estate, or by foreign attachment, where no personal service has been had, shall not be answered, and the defendant resides without the state, and does not come into the state before the regular time of answering has expired, the action shall be continued, and the time of answering, or filing special pleas, extended to such time as the court may appoint: *Provided*, that the defendant may come in and answer within such time; and on reasonable notice to the plaintiff the case may then be set down for hearing.

SEC. 286. In every action or proceeding, civil or criminal, for libel or slander, the defendant may, with his plea of not guilty, file a written notice that he will prove the truth of the publication charged as libellous or of the words charged as slanderous, and in such case may, upon the trial, give the truth in evidence without any special plea of justification; and the truth, unless published or uttered from malicious motives, shall be sufficient defence to the person charged.

SEC. 287. Any defendant in any action or suit, and any plaintiff in replevin, may in any court, with leave of the court, plead as many several matters thereto as he shall think necessary to his defence,

and it shall be no objection to a special plea that it amounts to the general issue, or that the evidence in support of it might be introduced under the general issue; and, with like leave, any plaintiff may reply as many several matters to the plea or pleas of the defendant as he shall think necessary; and the defendant may, with like leave, rejoin as many several matters to the replication or replications of the plaintiff as he shall think necessary.

SEC. 288. Whenever any action shall be brought upon any bond without condition, or upon any judgment, if the defendant has paid the money due upon such bond or judgment, or has obtained a release therefor, whether given prior or subsequent to the judgment thereon, such payment or release may be pleaded in bar of the action.

SEC. 289. Whenever any action shall be brought upon any bond which has a condition or defeasance to make void the same upon the payment of a less sum at a day or place certain, if the obligor, his heirs, executors, or administrators, have, before the action brought, paid to the obligee, his executors, or administrators, the principal and interest due by the defeasance, or condition of the bond, although such payment was not made strictly according to the condition or defeasance, yet it may, nevertheless, be pleaded in bar of the action, and shall be as effectual a bar thereof as if the money had been paid at the day and place, according to the condition or defeasance, and had been so pleaded.

SEC. 290. The defendant in every action grounded on an express or implied contract; in every action for breaking and entering plaintiff's close, wherein the defendant shall in his plea disclaim all right, title, and interest in and to said close; and in every action of trover or for any injury done to personal property,

that may be pending before any court, shall have the right to make and plead a tender, or may have leave to bring into court the money which he shall acknowledge to be due on such contract, or sufficient amends for such injury, together with the plaintiff's lawful costs up to the time of the tender made or pleaded, or the bringing of the money into court; and the plaintiff shall have a right to take the same in full or in part satisfaction of the demand made in such action.

SEC. 291. If the plaintiff in either of the above cases shall receive the same in part satisfaction only and shall proceed further in the same action, and the court or jury who shall finally assess the damages in such case shall determine that no more was due on the demand made in such action than was tendered or brought into court, as aforesaid, at the time the same was tendered or brought in, the plaintiff shall not recover costs, but shall be obliged to pay the costs accruing after such tender or after the money was brought into court as aforesaid, as the case may be.

SEC. 292. Whenever an action shall be brought to recover a sum due on any book account, or on money counts, the plaintiff shall annex to his declaration, on filing the same, an account of the particulars of his claim, or, failing so to do within such time as may be fixed by the court, his action may on motion be dismissed.

SEC. 293. The defendant in cases of book account and also in all actions on account stated by the parties, a quantum meruit, quantum valebat, or for goods sold, or for services done at an agreed price, may plead the general issue and may file with his said plea a statement in set-off as hereinafter provided; and the court or jury who shall assess the

28 R. I. 314.

28 R. I. 314.



damages in such cases shall determine the balance due to either party; and the party in whose favor the balance shall be found shall recover judgment therefor (provided that in any district court such balance does not exceed five hundred dollars), together with his costs, and shall have execution accordingly.

28 R. I. 314: SEC. 294. If any defendant shall have a demand on the plaintiff for any sum liquidated, or for one which may be ascertained by calculation, and which is founded on a judgment, or on an account, or on any contract whether express or implied, and whether with or without seal, and which existed at the time of the commencement of the action and then belonged to the defendant in his own right and for which he might maintain a suit in his own name, he may set off the same in any action founded on any demand which could itself be set off.

28 R. I. 1314: SEC. 295. To entitle the defendant to a set-off, he shall file a statement of his demands in court, or in the office of the clerk, with his plea, and shall set forth his demands with as much certainty as would be required in a declaration and the court in which the action shall be pending may render judgment for the defendant, for the balance due to him (but not exceeding the amount of five hundred dollars in a district court), and also give judgment for costs.

SEC. 296. If in cases of set-off in the district court the claim by the defendant shall exceed the sum of five hundred dollars, and in the opinion of the court there shall be due the defendant thereon a greater amount than five hundred dollars, then unless said defendant shall in writing accept judgment for five hundred dollars, the court shall render judgment against the plaintiff as in case of nonsuit, and for the defendant for his costs only, and shall not

further adjudicate upon the claim of the defendant, whose right to sue for the same shall remain in the same manner as before the commencement of the action: *Provided*, that in any case originally brought in a district court, wherein a jury trial shall be claimed, the superior court may give judgment for the defendant for the entire amount that may be found due to him on any claim in set-off filed therein by him, whether the same exceed the sum of five hundred dollars or not.

SEC. 297. When an action shall have been brought by a person who is not an inhabitant of this state, or by any foreign corporation which cannot be found therein to be served with process, or whenever such action shall be pending, and before final judgment therein, such plaintiff in the original action shall be held to answer to any action brought against him or it in this state by the defendant in the first action, if the demands in the two cases are of such nature that the judgment or execution in the one case can be set off against the judgment or execution in the other.

SEC. 298. If there are several defendants in the original action, each of them may bring such cross-action against the original plaintiff, and may be allowed to set off his judgment against that which may be recovered against himself and his co-defendants in like manner as if the latter judgment had been against himself alone.

SEC. 299. The writ in such cross-action may be served on the person who appears as the attorney of the plaintiff in the original suit, and such service shall be as valid and effectual as if made on the person or corporation within this state.

SEC. 300. The court in which the actions or either of them are pending may order continuances as they

think necessary or proper to enable the absent party to defend the action and also to enable either party to set off his judgment or execution against that which is recovered against him, but the actions shall not be unreasonably delayed by the neglect or default of either party.

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28 R. 1. 489  
29 R. 1. 519  
SEC. 301. No issue need be joined on a demurrer, nor need any pleadings be formally closed either to the court or to the jury, but the denial of any material allegation shall constitute an issue of fact. No motion in arrest of judgment shall be made except for want of jurisdiction.

SEC. 302. Whenever a demurrer is filed, the same need not be more formally stated than that the party demurring demurs to such declaration, or plea, but shall be accompanied with a statement of the specific grounds of demurrer.

28 R. 1. 358  
SEC. 303. In every case tried by the district court, or by the superior court without the intervention of a jury, the court deciding the same shall briefly note its conclusions of law and fact on its docket, or file the same with the papers in the case, and such record shall be known as a decision.

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## CHAPTER 18.

### OF PRACTICE IN EQUITY CAUSES AND IN CASES FOLLOWING THE COURSE OF EQUITY.

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28 R. 1. 103  
SECTION 304. All petitions for the enforcement of mechanics' liens, petitions for divorce, and statutory proceedings so prescribed by statute, shall follow the course of equity so far as the same is applicable.

SEC. 305. Subpœnas and citations in equity



causes and in all cases following the course of equity, shall, unless otherwise ordered or provided by law, be made returnable at any time within thirty days from the date of their issue, at the option of the complainant taking out the same.

SEC. 306. In special cases, on motion to a justice of the superior court, the return day, the time and the method of service, may be specially ordered, or the time for such service extended and a new return day fixed. In bills praying for temporary injunctions, motion for such injunction may be heard and granted by any justice of the court at any reasonable time.

SEC. 307. In bills praying for a temporary injunction, no additional petition shall be required, and the same may be granted on motion; but the bill shall be sworn to by the complainant, or some one in his behalf, and the subpoena shall contain notice of the application.

SEC. 308. The defendant in equity causes, or in causes following the course of equity, shall enter an appearance on or before ten days after the return day of the subpoena or citation, or, for cause shown, may be afterward permitted to appear therein.

SEC. 309. A demurrer, plea, or answer shall be filed within thirty days after the return day, or within such further time as may be allowed on motion, for cause shown. The complainant shall except or reply to an answer, or reply to a plea, within ten days after he, or his solicitor, shall be given written notice of the filing thereof, unless further time be given him for that purpose.

SEC. 310. Each bill or petition, including those matters mentioned in section 304, shall be docketed as filed, and shall be in order for assignment for trial,

or other disposition, on the assignment day in the county in which the cause is pending which occurs next after forty days from the return day, unless special order be made.

SEC. 311. If the complainant do not reply or except to an answer or reply to a plea, within ten days, or otherwise, as provided in section 309, the cause shall be considered as set down for hearing on the bill and answer, or plea, as the case may be.

SEC. 312. No formal replication shall be required, but the statement by the plaintiff that he joins issue on the answer or plea shall have the same effect as if formal replication had been made.

SEC. 313. All causes in equity and causes following the course of equity, in which no appearance has been entered for the respondent, or in which no answer, plea, or demurrer has been filed when due, shall, on motion of the complainant, be taken as confessed, and decree entered accordingly, if all prior proceedings have been correctly taken. Such decree, if no motion to set the same aside be made within five days after entry of the same, shall be conclusive, and the cause shall thereafter proceed *ex parte*. If such motion be made as above provided, said decree, for cause shown, may be set aside, and further time to file answer, plea, or demurrer may be granted on such terms as the court hearing the same may impose.

SEC. 314. No supplemental bill, or bill of revivor, shall be necessary in equity, but the superior court, by general rule or by special order, may provide for the introduction of any supplemental matter into the suit by way of addition to or amendment of the bill, and for entering upon the record the decease of any party, and for bringing in the heirs, personal representatives, and others interested.

SEC. 315. Whenever any bill or proceeding in equity is pending, any person not a party thereto may, upon making it appear to the superior court that he is interested in the subject-matter of the suit or proceeding, or that he has reason to apprehend collusion between the parties therein to obtain some order or decree by which his interest may be affected, be allowed to become a party to such suit or proceeding, upon such terms and conditions as the court shall prescribe.

SEC. 316. No cross-bill shall be necessary in any suit in equity, and no cross-petition in divorce proceedings, but the respondent in any such suit or proceeding may avail himself of any matter which would be open to him upon a cross-bill or petition, by setting up such matter in his answer, or in divorce proceedings by motion in writing setting forth the grounds therefor; and the court, upon hearing the cause, may make any decree for or against either party, interlocutory or final, warranted by the merits of the cause, that it could make in such suit or proceeding had a cross-bill or cross-petition been filed therein. 28 R. 1. 100.

SEC. 317. The court on motion as above, may grant affirmative relief to such a respondent in any petition for divorce. 28 R. 1. 98

SEC. 318. Whenever a complainant in equity shall waive an oath to the answer of the defendant, the answer shall have the same effect that is now given to a plea in an action at law.

SEC. 319. Whenever any defendant in a suit in equity resides or is without the state, the complainant may take out as many subpoenas to the defendant as he may deem proper, and may have one of them served upon such defendant personally by any disinterested person, which person shall make



affidavit of the service thereof, and of the manner in which, the time when, and the place where the service was made; or the service thereof may be made by the admission of such service by the defendant on the back of the subpœna, and by his acknowledgment thereof before some officer authorized to administer oaths.

SEC. 320. At any time after a cause is at issue, except in vacation, commissions to take testimony orally, on examination and on cross-examination, may be taken out, as of course, jointly by both parties; or for cause shown, upon special order of the court, may be taken out by either party. Commissions may be taken out to take testimony upon interrogatories filed in the clerk's office, by the party taking out the commission, ten days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission; and if no cross-interrogatories are filed at the expiration of the time and no further time is granted by the court on motion made within said term of ten days, the commission may issue *ex parte*. In all cases the commissioner or commissioners shall be named by the court. In case of extreme necessity, on order of a justice of such court, such commission may be taken out in vacation. In taking such testimony the commissioner shall follow the rules as to taking depositions, and shall have the same powers as to compelling the attendance of witnesses and the giving of evidence by them as officials authorized to take depositions by chapter 21 of this act. The court may, on motion of any party, hear any cause or proceeding in whole or in part on oral testimony, or it may send the pleadings and any issues therein (to be heard on oral testimony) to a master who, under the direction or rules, general or special, of

the court, shall hear and report to the court the evidence and his rulings in such suit or proceeding and his findings on such evidence; and if such rulings or findings be not specifically excepted to within thirty days after the opening of said report (of which opening the clerk of said court shall at once notify in writing all parties or their attorneys of record), they shall be conclusive on all parties, except that for cause shown the time may be extended on motion filed within said thirty days.

SEC. 321. The superior court may, by general rule or by special order, vary the forms of process, mode of proceeding, or of decree, heretofore in use, in such manner as may be necessary to carry into effect the provisions of any statute of this state.

SEC. 322. No suit in equity shall be defeated on the ground that a mere declaratory decree is sought, but the court may make binding declarations of right in equity without granting consequential relief.

SEC. 323. Parties having adversary interests in any question of the construction of any statute of this state, or of any will, deed, or other writing, or in any question of title or evidence of title to any real or personal estate contracted to be sold, or which is to be otherwise dealt with, or as to the parties to or the form of any deed or other instrument for carrying such contract into effect, or as to any matter or thing within the jurisdiction of a court of equity, may concur in stating such question in the form of a special case for the opinion of the supreme court; and executors, administrators, trustees, infants by their guardian or next friend, and married women, may concur in such statement; and the court may order any person having an interest therein to be summoned in and to be made party thereto; and the court, on hearing the case, may declare its opinion of

28 R. 1. 88.  
28 R. 1. 331.  
20 R. 1. 57/

the rights involved therein without administering any relief, and such declaration shall have the same effect as to all the parties before the court as if contained in a decree on original bill: *Provided*, that the court may decline to answer such questions as in its opinion it cannot properly decide.

SEC. 324. Whenever in causes in equity involving the construction of trusts or the powers thereunder, or powers generally or for the granting of any powers to trustees whether under general equity practice or under statutory provisions, there are contingent interests of persons not in being or not ascertainable, such interests may be represented by a person appointed by the court for that purpose, and in case of such representation, the decree entered in such cause shall bind all such contingent interests.

SEC. 325. In any bill or petition in equity wherein construction of a will or trust deed or any part thereof is asked, there may be allowed to each of the parties defendant brought in by such bill or petition, applying therefor, such reasonable sum for expenses and on account of counsel fees as the court in which such case is pending shall deem proper; such allowance shall be taxed as costs in the cause and be paid out of the estate or fund in the hands of the complainant concerning which estate or fund the construction is asked.

SEC. 326. Whenever the superior court shall decree, or shall have decreed, a conveyance of any real or personal estate, or of any right or interest therein, in any suit in equity, the court may direct the master in chancery to whom the cause shall be or shall have been referred, or before whom it shall be pending, to make, execute, acknowledge, and deliver such conveyance; and any conveyance made by any master under and according to such decree shall be



effectual to pass the title to the estate conveyed and in the decree described.

SEC. 327. Every bill or petition in equity shall state the facts in numbered paragraphs; and with the original there shall be filed one copy for the use of the respondents. Every answer shall be in numbered paragraphs, and with the original there shall be filed one copy for the use of the complainants.

#### APPEALS AND CERTIFICATIONS IN EQUITY AND OTHER CAUSES.

SEC. 328. Any party aggrieved by a final decree of the superior court in any cause in equity or proceeding following the course of equity may, within thirty days after the entry thereof, and any party aggrieved by a final judgment in any proceeding in, or in the nature of, a prerogative writ, except *habeas corpus*, may, within five days after entry of such judgment, appeal to the supreme court. Such appeal shall be taken by filing a claim of appeal, with a statement of the reasons thereof, in the office of the clerk of the court from which the appeal is taken. The appellant, at the time of filing such claim, shall file a written request to the court stenographer for a transcript of the testimony and shall advance the estimated fees of the court stenographer for transcribing such testimony, as may be required; whereupon, and upon compliance with such orders as may be made under the provisions of section 331, all proceedings under the decree or judgment appealed from shall be stayed.

SEC. 329. The party taking an appeal shall, within ten days after filing a claim of appeal, or within such extended time as the court may allow, but not later than fifty days after the filing of such

27 R. 1. 410

86  
102  
213  
28 R. 1. 102

28 R. 1. 336

Amended by P. L.  
Cap. 1351 Jan. '06

28 R. 1. 465

30 R. 1. 253, 303, 363

30 R. 1. 199

claim, or in case the court shall extend the time for filing a transcript of the evidence, as provided in section 72, then not later than ten days after the expiration of such extended time, file with the clerk a transcript of the testimony taken orally in the cause, if any, or so much thereof as may be agreed by the parties. The clerk, immediately upon the filing of the transcript, shall present the same for allowance to the justice who heard the cause, who after examination shall restore such transcript to the files of the clerk with a certificate of his action thereon.

SEC. 330. Upon an appeal being taken and such transcript of the testimony as may be required being allowed and returned as aforesaid, or in case of the disallowance or of failure to allow and return the transcript within twenty days from the filing thereof with the clerk, the clerk of the superior court shall forthwith transmit the original papers, including the evidence if on file and copies of such records in the superior court as may be necessary, to the clerk of the supreme court. The clerk of the supreme court shall then enter the cause on the docket of that court. If the transcript has not been allowed by the justice who heard the cause, or objection is made thereto by either party, the correctness of the transcript may be determined by petition as provided in section 494 for determining the matter of exceptions.

199, 200  
30 R. L. 234, 235,  
257

SEC. 331. When an appeal has been entered as aforesaid, the cause shall thereupon be pending in the supreme court. The justice of the superior court who made the decree appealed from, or, in case of his absence or disability, any justice of said court, may make such orders for injunction, giving bond, and the appointment of receivers, and such other orders as are needful for the protection of the rights of the parties until the appeal shall be heard and de-

28 R. L. 475

terminated by the supreme court, subject, however, to be modified or annulled by the order of the supreme court upon motion after the appeal is entered therein.

SEC. 332. The justice of the superior court shall, if so requested at the hearing by either party, report the material facts found by him, otherwise such report shall be within the discretion of the justice.

SEC. 333. No new testimony shall be presented to the supreme court on appeal, but in case of accident or mistake, or erroneous ruling excluding evidence in the superior court, the supreme court may grant leave to parties to present further evidence, and may provide by general rule or special order for the taking of such evidence.

SEC. 334. After an appeal has been entered in the supreme court, the court may make such orders as are needful to protect the rights of the parties pending the appeal, and orders for continuing, modifying, or annulling orders provisionally made by the superior court.

SEC. 335. Upon any cause being brought by appeal to the supreme court that court shall hear and determine such appeal and affirm, reverse, or modify the decree or judgment appealed from and make such orders and decrees therein as shall be just.

SEC. 336. Upon reversal or modification of the decree or judgment appealed from, the supreme court may remand the cause to the superior court with such directions as are necessary and proper, or may take such further proceedings in the cause as justice and the speedy determination of the cause may require, and after such proceedings shall remand the cause as aforesaid. In any such case the supreme court, if practicable, shall determine the form of the final decree or judgment before remanding the cause to the superior court. In case the



supreme court shall affirm the decree or judgment appealed from, it shall certify its affirmation and remand the cause to the superior court for further proceedings. In every case the supreme court, upon remanding a cause to the superior court, shall transmit all the papers in the cause to the superior court, and the final decree or judgment shall be entered in the superior court.

*leaf 1351 Jan 06*  
 SEC. 337. Whenever upon a hearing in equity in the superior court an injunction shall be granted or continued or a receiver appointed, by an interlocutory order or decree, an appeal may be taken from such order or decree to the supreme court at any time within ten days from the entry thereof, in like manner as from a final decree, and such appeal shall take precedence in the supreme court. The proceedings in the cause in the superior court shall not be stayed in other respects unless ordered by the superior court. The appeal shall not suspend the execution of the order or decree appealed from, but the supreme court, pending the appeal, upon such terms as to the court may seem proper, may suspend the operation thereof until the determination of the appeal. The appeal shall transfer to the supreme court only the question whether the decree appealed from shall be affirmed, reversed, or altered.

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 SEC. 338. The superior court shall certify to the supreme court for its determination all bills in equity for the construction of any will or trust deed, or for instructions relative to any will or trust deed, whenever, and as soon as, any such cause is ready for hearing for final decree, and may, after hearing any other cause for final decree, certify such cause for the determination of the supreme court. The supreme court shall thereupon hear and determine the cause so certified, and like proceedings shall be

*28 R. 1. 594*  
*28 R. 1. 232*

*30 R. 1. 304, 307*

had therein, so far as the same are applicable thereto, as if said cause were brought before the supreme court on appeal.

SEC. 339. If, upon making any interlocutory decree or order, or if otherwise in the course of the proceedings in any cause, any question of law shall arise which in the opinion of the court is of such doubt and importance; and so affects the merits of the controversy, that it ought to be determined by the supreme court before further proceedings, the superior court may certify such question to the supreme court for that purpose, and stay all further proceedings except such as are necessary to preserve the rights of the parties. 28 R. 1. 216

SEC. 340. The supreme court, in any cause pending before it on appeal or certification, may order any person having an interest in the subject-matter not a party to such cause to be summoned in and made a party thereto.

SEC. 341. No process for the execution of a final decree of the superior court from which an appeal may be taken shall issue until the expiration of thirty days after the entry thereof, unless all parties against whom such decree is made waive an appeal by a writing filed with the clerk or by causing an entry thereof to be made on the docket.

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## CHAPTER 19.

### OF PRACTICE IN CHAMBERS IN THE SUPREME AND SUPERIOR COURTS.

SEC. 342. The superior court shall hold so many sessions upon motion days as may be necessary for the purpose of hearing demurrers, motions for new

trial and other motions, for settling bills of exceptions, and for hearing interlocutory matters in equity.

SEC. 343. All motions in the supreme or superior court shall be in writing and, except *ex-parte* motions, shall be filed at least sixty hours, exclusive of Sundays and legal holidays, before being called for hearing; and, except in *ex-parte* motions, notice in writing shall be served upon the attorney or solicitor of record of the opposite side, or, if there be no such attorney or solicitor of record, upon the adverse party, at least forty-eight hours, exclusive of Sundays and legal holidays, before being called for hearing, unless a different time for such filing and service be fixed *ex-parte* by a justice of the court.

SEC. 344. All motions shall be docketed as filed, and shall be called in the order of filing, and if not disposed of, on motion day, shall be continued. A calendar shall be made up for each motion day.

SEC. 345. Whenever it is provided that notice in writing shall be given to any party or his attorney of record, such notice shall be served by any person by leaving the same in the hands or possession of such party or his attorney of record, or at the last and usual place of abode of such party with some person living there, or at the office of such attorney of record with some person having charge thereof: *Provided, however*, that if said party cannot be found and his residence be not known and he has no attorney of record, the moving party or his attorney at any time shall make affidavit of such facts, and thereupon any justice of the court shall order such notice to be given as he shall deem proper. The affidavit of the person making service, setting forth the time, place, and manner of service, shall be prima facie evidence; but



service of such notice may be accepted by a party or his attorney of record by written statement on the notice.

SEC. 346. Whenever provision is made for the hearing of a matter on a day certain, it may be heard then or on some future day to which the court may assign the same, or on which all the parties in writing may agree and to which the court may assent.

SEC. 347. The parties to a cause by consent in writing may extend the time of pleading, or the periods within which proceedings in court are prescribed to be taken.

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## CHAPTER 20.

### OF TRIALS.

SECTION 348. If a party know of any objection to a juror before the case is opened to the jury and omit to suggest it to the court, he shall not afterwards make such objection, unless by express leave of the court.

SEC. 349. Either party in a civil action, or in any criminal proceeding, may, before the opening of such action or proceeding to the jury, challenge in writing, addressed to the clerk of the court, any qualified jurors called for the trial of said cause or proceeding, not exceeding one in four, without alleging or showing any cause therefor; and after such objection the challenged jurors shall not sit in the trial of such cause, but other jurors shall be called to take the place of the challenged jurors for the trial of the cause.

SEC. 350. Written objections or challenges, filed under the provisions of the preceding section, shall

be kept in such place, and shall be disposed of in such manner, as the court shall direct.

SEC. 351. The plaintiff or appellant in any cause shall not have the right to become nonsuit, or to discontinue the cause, after the trial of the same shall have been begun to the court or jury; but the cause shall, in the discretion of the court, proceed, and the decision of the court or verdict of the jury shall be taken therein, whether the plaintiff or appellant shall appear or not: *Provided, however,* that the cause, by consent of all the parties thereto, may be discontinued at any time.

SEC. 352. In all cases, except where otherwise provided, if judgment be rendered on default, discontinuance, submission, or demurrer, damages shall be assessed by the court, with or without the intervention of a jury, in the discretion of the court.

SEC. 353. In any case the court may, and upon request of either party shall, direct the jury to return a special verdict upon any issue submitted to the jury. Such issues shall be settled by the justice presiding at the trial, and either party may except to his rulings thereon. In addition to such special findings on the issues submitted, the jury shall in each case return a general verdict, and shall assess such damages, if any, therein as they may deem just.

SEC. 354. In equity causes the superior court may frame issues of fact to be tried by a jury, as the court in its discretion may deem advisable; otherwise all equity cases shall be tried in the superior court on depositions, excepting such cases as the court shall allow to be tried wholly or in part on oral evidence.

## CHAPTER 21.

## OF VIEWS, WITNESSES, DEPOSITIONS, AND EVIDENCE.

*Views.*

SECTION 355. In all cases in which it shall seem advisable to the court, on request of either party, a view by the jury may be ordered; and in all such cases the court shall regulate the proceedings at the view and in its discretion accompany the jury.

SEC. 356. To entitle himself to a view, the party moving therefor shall advance such reasonable sum of money to the sheriff, to defray the expenses of the jury on the view, as the court shall order, and the amount of such expenses shall be taxed against the adverse party, if he who advanced the same shall recover costs in the suit.

*Witnesses.*

SEC. 357. The form of subpœna to a witness shall be substantially as follows:

SC.

*To of Greeting:*

You are hereby required, in the name of the State of Rhode Island and Providence Plantations, to make your appearance before holden at on the day of to give evidence of what you know relative to an action or plea of then and there to be heard and tried between plaintiff and defendant.

Hereof fail not, as you will answer, your default under the penalty of the law in that behalf made and provided.

Dated at the day of in the year



SEC. 358. Clerks of courts, and justices of district courts, may issue subpœnas to witnesses in all cases pending in their own or any other court.

SEC. 359. Auditors, referees, masters in chancery, and commissioners may issue subpœnas to witnesses in all cases and matters pending before them, respectively; and justices of the peace and notaries public may issue subpœnas to witnesses in any case, civil or criminal, before any court, and in any matter before any body or person authorized by law to summon witnesses.

SEC. 360. Every town council, city council, board of aldermen, common council, school committee, or any committee of any of said bodies may, by their respective presiding officers, issue subpœnas to witnesses to testify in any matter pending before them; may administer oaths to such witnesses, may compel their attendance, and may punish them for non-attendance by fine not exceeding twenty dollars.

SEC. 361. A subpœna to a witness shall be served by reading the same to him.

SEC. 362. Every witness who shall be duly served with a subpœna in behalf of any party to a suit or proceeding, civil or criminal, and shall have his lawful fees tendered to him for his travel from his place of abode to the place at which he shall be summoned to attend, and for one day's attendance, shall be obliged to attend accordingly.

SEC. 363. A witness summoned in behalf of the state shall have no right to have his fees paid or tendered to him before he shall be bound to obey the summons.

SEC. 364. Every witness who does not appear according to the tenor of such subpœna, and has no reasonable excuse for his non-appearance, shall be

liable to an action by the aggrieved party for all damages sustained in consequence of such default.

SEC. 365. The court before which any witness is duly summoned to appear may compel his attendance by writ of attachment, fine him not exceeding twenty dollars, and order him to pay the costs of such attachment and to be committed to prison until such fine and costs be paid.

SEC. 366. Whenever any witness, duly served with a subpoena to testify in any criminal proceeding at any court, shall neglect to appear according to the tenor of such subpoena, the court may order a writ of attachment to issue against him, returnable at such time as the court shall direct, and may direct the same to each and all sheriffs, deputy sheriffs, town sergeants, and constables within the state.

SEC. 367. If the court from which such writ of attachment issues shall not be in session at the time of the service of such writ, the officer charged with the service thereof shall commit such witness to jail, either in the county from which the writ shall issue or in which such witness shall be; there to be kept until he shall give recognizance before some person authorized to take bail in the same county, with sufficient surety, in the sum of one hundred dollars, to appear before said court on the day named in the writ, or, failing to give recognizance, until he be discharged by the court; and said recognizance shall be returned by such person to the clerk of said court.

SEC. 368. The witness may give recognizance as aforesaid while in custody of the officer, before he is committed to jail; and thereupon the officer shall discharge him from custody.

SEC. 369. Every witness, previous to his obtaining any fee, except the amount which, in certain cases, must be tendered to him before he can be

compelled to attend, shall give a certificate to the court wherein he has attended, certifying the number of days he has attended and the number of miles he has traveled; which certificate shall be subject to the examination of the court, and, if question arises, such allowance shall be made thereon as shall be lawfully due.

SEC. 370. Any justice of the superior court may, in any cause, civil or criminal, on motion of any party therein, at any time before the trial thereof, appoint one or more disinterested skilled persons, whether they be residents or non-residents, to serve as expert witnesses therein: *Provided*, that the reasonable fees of such experts, according to the character of the service to be performed, as fixed by such justice, shall be paid by the party moving for such appointment to the clerk of the court at such time as the justice shall prescribe; and the amount so paid shall form part of the costs in the cause. In criminal cases in the discretion of the court, on request of the defendant, expert witnesses may be furnished for the defendant at the expense of the state, on such terms and conditions as may be prescribed by the court.

SEC. 371. Such experts, being first duly sworn before a justice or clerk of the court to make a faithful and impartial examination into the matters and things committed to them, and true report thereon to make according to the best of their knowledge, belief, and understanding, shall thereupon proceed to view and examine such persons, matters, and things, to read and hear such evidence, and in such manner, times, and places, whether by attendance at the trial of such cause or otherwise, and to report their findings, views, and opinions thereon, jointly or severally, orally or in writing, to



the court where such cause shall be pending, before or at the trial thereof, in such manner as the justice appointing them, or any justice of the court sitting in the cause, shall prescribe; and such report, if in writing, shall form part of the record of the cause, and shall be produced in evidence at the trial thereof, and such experts shall attend at such trial until excused by the court: *Provided*, that any party to the cause may call and examine, or cross-examine, any such expert at the trial as to the matters, persons, things, views, findings, and opinions, contained, mentioned, or referred to in any such report, without further summons.

SEC. 372. In any action in the superior court, wherein damages shall be claimed for any injury to the body or health, physical or mental, of any person, and wherein an expert or experts shall be appointed by any justice under the preceding two sections for the purpose of making an examination of the body and health of the person alleged to have been so injured, the justice shall require the person alleged to have been so injured to submit to a reasonable examination or examinations of his body and health, physical or mental, by the expert or experts so appointed, at such times and places as said experts may require to enable them to make their report thereon to the court, and as the justice shall prescribe; and thereupon such action shall be continued until the examination or examinations shall have been made. And in any such action any justice of the court may, upon application of the plaintiff, require the defendant to permit the attorney of record of the plaintiff, with or without any expert or experts appointed under the preceding two sections, to view and examine the place and cause of

such injury, at such reasonable time, and upon such terms and conditions, as said justice may direct.

SEC. 373. Fees of experts, except as provided in section 370, shall not be allowed as part of the costs in any case, in excess of the fees allowed for ordinary witnesses.

*Depositions.*

SEC. 374. Except in equity causes, any justice of the supreme or superior court, justice of the peace, or notary public, may take the deposition of any witness, to be used in the trial of any civil suit, action, petition, or proceeding, in which he is not interested, nor counsel, nor the attorney of either party, and which shall then be commenced or pending in this state, or in any other state, or in the District of Columbia, or in any territory, government, or country; and in equity causes testimony may be taken by deposition or orally, as provided in section 320.

SEC. 375. Previous to the taking of any deposition as aforesaid within this state, the official authorized to take the same shall in all cases cause the adverse party or his attorney of record to be notified in writing of the time and place appointed for taking such depositions, so that he may attend and put interrogatories to the deponent, if he think fit: *Provided*, that if the person to be notified can not be found and his residence be not known, and he has no attorney of record, the moving party or his attorney may make affidavit of such facts before any justice of the superior court at any time, and thereupon the justice shall prescribe the method in which notice shall be given to such person.

SEC. 376. The notification issued by the magistrate, officer, or commissioner who shall take such deposition shall be directed to any proper officer,

or to any impartial or disinterested person, and shall be served a reasonable time, not less than twenty-four hours, exclusive of Sundays and legal holidays, before the time of taking such deposition.

SEC. 377. The officer or other person charged as aforesaid with the service of such notification shall serve the same by reading it to the party to be cited, if to be found; and if not to be found, by leaving a copy thereof at his usual place of abode; and shall, in his return, state the manner and time of such service; and whenever such service shall be made by any person other than a sworn officer, he shall verify the same, under oath, before some officer authorized to administer oaths.

SEC. 378. Depositions may be taken without this state to be used in the tribunals of this state, upon an order obtained on motion from the court in which the case is pending, and when ordered shall be taken *either* by the person and in the manner and with the formalities required by the law of the state, district, territory, or country, in which the same shall be taken; or, *second*, shall be taken, if taken in any other state, district, or territory of the United States, before a commissioner appointed by the governor of this state, or before a judge, chancellor, justice of the peace, notary public, or civil magistrate of such state, district, or territory, respectively, or, if taken out of the United States, before a resident official of the United States, or, if the deponent be in the military or naval service of the United States, before a colonel, lieutenant-colonel, or major in the army, or before any officer in the navy not below the grade and rank of lieutenant-commander. And in every such case under the second methods, the party causing such depositions to be taken shall notify the adverse party, or his attorney of record, of the time and



place appointed for taking the same; and such notification issued by the official before whom such deposition is to be taken shall be served, in the manner hereinbefore provided, such reasonable time before the taking of such deposition as will give the adverse party a full opportunity to be present in person or by attorney and put interrogatories to the deponent, if he think fit.

28 R. L. 572. SEC. 379. Every person, before deposing, shall be sworn to testify the truth, the whole truth, and nothing but the truth, and after giving such deposition shall subscribe his name thereto, if taken in long-hand, in the presence of the official before whom the same was taken. Such deposition may be reduced to writing by such official or by any person, including the deponent, under his direction and in his presence, or may be reduced to writing stenographically either by such official or by some person in his presence and under his direction, sworn by such official to correctly take down in short-hand, the evidence as given; and in the latter case a transcript thereof in long-hand writing, typewriting, print, or other reproduction, sworn to by the person stenographically reporting the same and signed by the deponent, shall be received in evidence. The signature in the latter case shall be attested by the official taking the deposition or by some magistrate authorized to administer oaths whether in this state or elsewhere.

SEC. 380. The deposition, so taken, shall be retained by such magistrate, officer, or commissioner until he deliver the same with his own hand to the court for which it is taken, or shall, together with a certificate of its having been duly taken, be by said magistrate, officer, or commissioner, sealed up and directed to such court and delivered to the clerk

thereof, and remain so sealed until opened by order of the court or of some justice thereof, or by the clerk with the consent of the parties; and any person may be compelled to appear and depose as aforesaid within this state, in the same manner as to appear and testify in court.

SEC. 381. The deposition of any person taken pursuant to this chapter may be used as evidence in the trial of any judicial proceeding in any court, or town council, or before commissioners, masters in chancery, referees, or auditors, in which it shall have been taken to be used; and if the party who took the same shall neglect to produce or use it, the adverse party may use the original or a copy of such deposition, certified by the magistrate before whom it was taken.

SEC. 382. Any court may, on the motion of either party in any action, suit, or proceeding, civil or criminal, pending therein, in which a deposition may be used, or before any commissioners, referees, or auditors appointed by any such court or under a rule from it, grant a commission to take depositions according to law, whenever it may be necessary to prevent a failure or delay of justice, on such terms as such court, by general or special order, may direct; and the deposition, so taken, may be used in any stage of the cause, on appeal or otherwise.

SEC. 383. Depositions may be taken as provided in this chapter at any time: *Provided, however*, that no deposition, to be used in a jury trial, shall be taken during the progress of such trial, except upon order of the justice presiding.

SEC. 384. Depositions may be taken in this state, to be used on the trial of any cause pending in a tribunal of any other state, district, territory, or country, before any person residing in this state, to

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whom a commission shall be directed and sent by such tribunal, with the formalities prescribed in such commission, or, if there are none prescribed, then according to the laws of the jurisdiction whence said commission issues.

*Depositions in Perpetual Memory.*

SEC. 385. Any person, desirous of perpetuating the testimony of any witness concerning any matter which is or may be the subject of litigation, as well before as after litigation is commenced, may present a petition in writing to any justice of the supreme or superior court, or to any justice of a district court, setting forth the reasons of his application, the name of the witness or witnesses, the subject-matter of the controversy, and the names of all persons known to be interested therein, and praying that the deposition of such witness or witnesses may be taken; and thereupon, if such justice be satisfied of the reasonableness of the petition, he shall designate some notary public or standing master in chancery to take such deposition, to whom said petition, with said order of designation thereon, shall be sent.

SEC. 386. Such deposition, in case of the death of any deponent, his becoming of unsound mind, his absence from this state, or inability to attend, may be used as evidence in any court in this state against any person who shall have had due notice of the taking of such deposition, his heirs, executors, or administrators.

SEC. 387. The same formalities shall be observed as to notice, and the same methods may be employed, in the taking of depositions in perpetual memory as in the taking of other depositions, and the officer taking the same shall have the same power



and authority as magistrates taking other depositions to compel any person to appear and depose as aforesaid, within this state, in the same manner as to appear and testify in court. In case any person who is entitled to notice of the taking of such deposition shall be or reside outside of this state such notice may be served by any disinterested person, and such other notice shall be given as the justice to whom such petition was presented may order.

SEC. 388. The officer taking such deposition shall seal up and direct the same, together with the petition therefor, to the clerk of the superior court for the county in which some one of the persons notified of the taking of the same shall reside, or if no one of the persons so notified shall reside in this state, then the court for the county in which the person preferring such petition shall reside, and in case no one of the persons notified nor the person preferring such petition shall reside in this state, then in Providence county. Said clerk shall, on receiving such deposition and petition, so directed and sealed up, on payment of legal fees for recording as in other cases, open and record such deposition and petition and the certificate of the taking of such deposition, in a book to be specially kept for that purpose, noting on such deposition the time when he received it and the page of the book in which it is recorded, after which he shall deliver the deposition and petition to the party preferring the petition; and no deposition not so recorded shall be received as evidence in any court in the state, unless the same shall be opened in court at the time of the hearing of the cause in which it is used.

*Certain Provisions Respecting Evidence.*

SEC. 389. No person shall be disqualified from testifying in any action at law, suit in equity, or other proceeding at law or in equity, by reason of his being interested therein or being a party thereto.

SEC. 390. Any court, or any justice thereof, may order the oral examination of witnesses in open court in any matter pending before such court or justice.

SEC. 391. In the trial of every civil cause, the husband or wife of either party shall be deemed a competent witness: *Provided*, that neither shall be permitted to give any testimony tending to criminate the other or to disclose any communication made to him or her, by the other, during their marriage, except on trials of petitions for divorce between them, and trials between them involving their respective property rights.

SEC. 392. In all divorce cases, the testimony shall be given *viva voce* in open court, unless (1) the witness shall be unable to attend by reason of physical disability, in which case a sworn certificate to that effect from a physician shall be filed with the deposition of such witness, or (2) unless the witness reside and be out of the state, or (3) unless the deposition be taken before a standing master in chancery, whose fees for taking the same shall be those prescribed by law for the taking of depositions by notaries public.

SEC. 393. Depositions taken in conformity to the provisions of this chapter may be used in the trial of any bastardy case.

SEC. 394. Transcripts from stenographic notes of testimony duly taken in the superior court, under statutory authority, verified by the certificate of the stenographer taking the same, and allowed by

the court, shall be admissible as evidence that such testimony was given, whenever proof of such testimony is otherwise competent.

SEC. 395. No person shall be deemed an incompetent witness because of his conviction of any crime, or sentence to imprisonment therefor; but shall be admitted to testify like any other witness, except that conviction or sentence for any crime or misdemeanor may be shown to affect his credibility.

SEC. 396. No respondent in a criminal prosecution, offering himself as a witness, shall be excluded from testifying because he is such respondent; and neglect or refusal so to testify shall create no presumption nor be used in argument against him.

SEC. 397. The husband or wife of any respondent in a criminal prosecution, offering himself or herself as a witness, shall not be excluded from testifying therein because he or she is the husband or wife of such respondent.

SEC. 398. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto.

SEC. 399. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness, or otherwise, of the writing in dispute.

SEC. 400. In all courts and before any body or person authorized by law to summon witnesses, a copy of any notice, advertisement, or article extracted from any newspaper contained in any of the bound volumes deposited with the Rhode Island Historical



Society or with its cabinet keeper, or with the Newport Historical Society or its librarian, under the provisions of section 11 of chapter 22 of the General Laws, certified by the said cabinet keeper or librarian, respectively, shall be of equal value with the paper itself, and the said cabinet keeper and librarian shall be entitled to the same fees for copies and certificates as are allowed by law therefor to town clerks.

SEC. 401. A copy of the statutes of the United States, or of any state thereof, or of any territory or country, purporting to be published by authority of the United States, state, territory, or country, and the published reports of the decisions of the courts of the United States, state, district, territory, or country, and the published ordinances of any city or town in this state, shall be admitted in all the courts of this state as prima facie evidence of the laws of the United States, state, district, territory, or country, or ordinances of the city or town, under whose authority they respectively purport to have been published.

SEC. 402. Whenever either party to any proceeding at law or equity in the superior court shall set forth in writing, under oath, upon his knowledge or belief, that the opposite party is in the possession or control of some document which the applicant is entitled to examine, and prays for its production, a justice of the court, to whom application is so made, on such petition, may order the opposite party, or if the same be a body corporate, then some officer thereof, to make answer on oath at or before a time to be fixed in said order, as to what document he or it so has relating to the matter in dispute between the parties, or what he knows as to the custody of such document, and, if in his or its possession or control, whether he or it objects to the production of the

28 R. 1. 86

29 R. 1. 70

same and the grounds of such objection; and thereupon such justice, after hearing such petition, answer, and evidence, shall decide whether or not said document shall be produced, and order, or decline to order, its production, and, if proper, compel the party having the same in his or its possession or control to allow the applicant to examine the same, and, if necessary, to take examined copies of the same, or have such original documents impounded, and may make such further order in the premises as shall be just.

SEC. 403. The justice making such order may enforce the same in like manner as if made in a suit in equity.

SEC. 404. In actions of ejectment, and trespass and ejectment, to recover possession of lands, tenements, or hereditaments, the plaintiff shall not be required to prove an actual entry under his title; but if he prove that he is entitled to such an estate as he claims in the premises, whether as heir, devisee, purchaser, or otherwise, and also that he has a right of entry therein, this shall be deemed sufficient proof of his seisin, as alleged in his declaration; but no such action shall be maintained unless the plaintiff has, at the time of commencing the same, a right of entry into the premises.

SEC. 405. No misstatement made in procuring a policy of life insurance shall be deemed material or render the policy void unless the matter thus represented shall have actually contributed to the contingency or event on which the policy is to become due and payable; and whether the matter so represented contributed to said contingency or event, in any case, shall be a question for the jury.

*Sec 405 3/4 added by PL 418 Jan 1909*

## CHAPTER 22.

## OF REFEREES, AUDITORS, AND MASTERS IN CHANCERY.

SECTION 406. Any court may permit the parties in any action at law or suit in equity pending therein to enter into a rule of court to refer such action or suit to the decision of one or more referees, to be agreed on by the parties, and also to refer in the same rule any other actions or causes of action, or suits, that may exist between them either jointly or severally, generally or specially.

SEC. 407. Though no action or suit be brought or pending, as aforesaid, any district court may permit any persons or corporations who have any cause or causes of action at law, and the superior court may permit any persons or corporations who have any cause or causes of action at law or in equity, existing between them, to enter into a rule of court to refer such cause or causes of action to the decision of one or more referees, as aforesaid, either jointly or severally, generally or specially: *Provided*, that no rule entered into in any district court under the provisions of this chapter shall be made for any claim or claims which exceed in amount the sum of five hundred dollars.

SEC. 408. Leave may be given under the preceding section, in the superior court, to enter the rule in any county, to be certified to the county where the matter more properly belongs.

SEC. 409. The parties to any rule shall agree upon the mode of procedure, the defraying of expenses, the time when and manner in which the referees shall make their report, and the time and manner of issuing execution on the judgment or decree which the court shall enter, upon the coming in of the re-



port; and every such agreement, made as aforesaid, shall be conclusive upon the parties and upon their heirs, executors, administrators, and successors, and, if involving real estate, when notice thereof is duly recorded, upon their assigns. And a majority report of referees shall be binding and conclusive.

SEC. 410. Upon the coming in of the report of referees, as aforesaid, the court shall enter judgment or decree thereon and in conformity thereto, and issue execution accordingly.

SEC. 411. The court may, at any time in its discretion, on motion of either party, discharge a rule or recommit a rule and report to the same referees, or, with consent of the parties, to other referees; but a rule shall remain in full force until so discharged, and shall be continued without continuance fees, until report shall be made thereon.

SEC. 412. Every referee, before he proceeds to the business of the reference, shall be sworn to perform his duties faithfully and impartially as such referee.

SEC. 413. Referees and auditors shall have power to administer oaths in all matters tried before them, and also power to compel witnesses to attend and give testimony under oath in matters tried before them, in the same manner and by a similar process as courts of record, and any summons for such witnesses may be issued and signed by any referee or auditor, or by any clerk of court, notary public, or justice of the peace.

SEC. 414. Whenever any rule, entered into under the provisions of this chapter, shall concern the title to real estate, the referees shall report their proceedings, with a plat of the real estate in question showing the title as affected by their decision; and if their report is finally received, a copy of such report

and plat, certified by the clerk of the court where the rule is entered, shall be recorded in the records of land evidence in the town or city in which such estate shall be, and the expense of such record shall be a part of the costs of the party against whom the referees shall have decided, unless otherwise agreed.

28 R. L. 24. SEC. 415. Whenever a cause is at issue in the superior court, in any way involving accounts, the court, of its own motion, or on application of either party in a proper case, may appoint one or more auditors to hear the parties, examine their vouchers and evidence, state accounts, and report upon such matters therein as may be ordered by the court.

SEC. 416. Auditors, after being sworn to faithfully and impartially discharge their duties, shall notify the parties of the time and place of their meeting, and may adjourn from time to time as may be necessary; and if there be more than one auditor, all shall meet and hear the cause, but the report of a majority shall be valid.

SEC. 417. If the plaintiff or defendant shall unreasonably refuse or neglect to appear at the time and place appointed for the hearing, the auditors may proceed with the cause *ex-parte* and report thereon.

SEC. 418. Such auditors shall make their report within such time as the court shall appoint, or within such time as extended by the court; but if no time is named, the same shall be returned within sixty days. If the auditors fail to make report within the prescribed time, either party may file notice in writing with the clerk of the court wherein the case is pending that he elects to end the reference, and in such case the auditors shall recover no fees.

SEC. 419. The parties to such action shall be allowed two days, exclusive of Sundays and legal

holidays, after the coming in of the report, and such further time as the court may allow for cause shown, to examine such report and file their exceptions thereto.

SEC. 420. The auditors shall file with their report a statement of the costs both of the plaintiff and of the defendant, and the party prevailing in the cause shall recover his costs; and the court shall, unless all the parties agree on the amount, award such reasonable compensation to the auditors as shall seem just, to be paid by the parties as the court shall direct: *Provided*, that if the auditors so request, the report shall not be opened until their fees be determined and paid to them. In all cases the report shall be opened by the clerk or assistant clerk.

SEC. 421. The court may, for cause, discharge the auditors, and appoint others, or fill vacancies, and may recommit the report for revision, or further examination, to the same or to other auditors.

SEC. 422. The court, upon the reception of the report, if no cause be shown against the allowance of the same, shall render a decision thereon which shall be final, unless within two days thereafter the plaintiff or defendant shall, in writing, file with the clerk of the court in which said cause is pending a demand for jury trial, if the same has not been waived. 28 R. I. 84  
31 R. I. 533

SEC. 423. Every reference to referees or auditors under the provisions of this chapter, when made by agreement of all the parties, shall be deemed a waiver of any claim for jury trial. 28 R. I. 84  
31 R. I. 533

SEC. 424. The superior court, by a majority of the justices thereof, shall appoint in each county one or more standing masters in chancery to hold office during the pleasure of the court; and may make all such rules and orders, not contrary to law, with regard to proceedings before masters in chan-



such list of persons in their town liable to do duty as jurors, every member of the council so neglecting shall be fined twenty dollars.

SEC. 81. The clerk of the superior court for each county shall from time to time, as it shall be most convenient for him, but before the first day of June in each year, transmit to the town clerk of each town, in the county or counties for which said court is held, lists of the names of all persons from said town who appear from the records of said court to have actually served on any grand or petit jury impanelled in the court of which he is clerk during the year next preceding said first day of June, and also the names of all persons from said town who have been excused by the court from serving as such jurors for the current year, together with the reasons therefor, and the opinion of the court, if any such has been given, that certain of such persons should be permanently excused from serving as jurors.

SEC. 82. Said clerk shall be entitled to compensation for making such lists at the rate of twenty-five cents for each hundred, and fifteen cents for any fraction of a hundred, names on said lists; and the state auditor shall draw his warrant on the general treasurer for the amount thereof, upon the certificate of said clerk of the total number of such names on said lists.

SEC. 83. The town clerk of each town shall between the first and fifteenth days of June in each year erase from the list of the persons qualified to serve as jurors, made by the town council of said town in the month of April in said year, the names of all persons who appear from the returns of said clerk of said court to have served as jurors as aforesaid within two years next preceding the first day of June in said year, and also the names of such persons appearing

in such returns as in the opinion of the court should be permanently excused from serving as jurors.

SEC. 84. The town council in each town shall in each year, after the fifteenth day of June and before the second Monday of July, and thereafterwards during the year and before the following fifteenth day of June, as often as may be necessary to carry out the provisions of this chapter, hold a meeting for the purpose of drawing grand and petit jurors. The names of all remaining persons on said lists shall be written on separate pieces of paper and placed in a box provided for that purpose by each town, which box shall be kept locked by the town clerk in his possession. And at such meetings the town councils shall draw from said box the names of persons to serve as grand jurors and as petit jurors for said court for said county as hereinafter provided. The drawing shall be by lot and by the presiding officer of the town council, who shall read aloud each name as drawn, and immediately pass the piece of paper containing such name to the other members of the town council to be read aloud by each of them, and the town council shall not excuse from serving any legally qualified person whose name is drawn.

SEC. 85. There shall be drawn at such meetings of the town councils held before the second Monday in July in each year in the county of Newport sixty grand jurors and one hundred and twenty-eight petit jurors, who shall be drawn from the several towns as follows: from Newport, thirty-nine grand jurors and eighty-four petit jurors; from Portsmouth, four grand jurors and eight petit jurors; from Jamestown, two grand jurors and four petit jurors; from Middletown, two grand jurors and five petit jurors; from Little Compton, three grand jurors and six petit jurors; from Tiverton, six grand jurors and twelve

petit jurors; and from New Shoreham, four grand jurors and nine petit jurors.

SEC. 86. There shall be drawn at such meetings of the town councils held before the second Monday of July in each year in the counties of Providence and Bristol ninety-six grand jurors and ten hundred and sixty-four petit jurors, who shall be drawn from the several cities and towns as follows: from Providence, forty-two grand jurors and four hundred and forty-four petit jurors; from Smithfield, one grand juror and ten petit jurors; from Scituate, two grand jurors and twenty-five petit jurors; from Glocester, one grand juror and fourteen petit jurors; from Cumberland, three grand jurors and thirty-three petit jurors; from Cranston, five grand jurors and fifty-five petit jurors; from Johnston, two grand jurors and eighteen petit jurors; from North Providence, one grand juror and fourteen petit jurors; from Foster, one grand juror and eleven petit jurors; from Burrillville, three grand jurors and thirty-three petit jurors; from Pawtucket, fourteen grand jurors and one hundred and fifty-five petit jurors; from East Providence, three grand jurors and forty-five petit jurors; from Woonsocket, six grand jurors and seventy petit jurors; from Lincoln, two grand jurors and twenty-five petit jurors; from North Smithfield, one grand juror and nine petit jurors; from Central Falls, four grand jurors and forty-four petit jurors; from Bristol, three grand jurors and twenty-nine petit jurors from Warren, one grand juror and nineteen petit jurors; and from Barrington, one grand juror and eleven petit jurors.

SEC. 87. There shall be drawn at such meetings of the town councils held before the second Monday of July in each year in the county of Washington sixty grand jurors and one hundred and thirty-six



petit jurors, who shall be drawn from the several towns as follows: from Westerly, fifteen grand jurors and thirty-three petit jurors; from North Kingstown, twelve grand jurors and twenty-six petit jurors; from South Kingstown, thirteen grand jurors and twenty-eight petit jurors; from Charlestown, four grand jurors and nine petit jurors; from Exeter, three grand jurors and seven petit jurors; from Richmond, three grand jurors and eight petit jurors; from Hopkinton, seven grand jurors and seventeen petit jurors; and from Narragansett, three grand jurors and eight petit jurors.

SEC. 88. There shall be drawn at such meetings of the town councils held before the second Monday of July in each year in the county of Kent sixty grand jurors and one hundred and twenty petit jurors, who shall be drawn from the several towns as follows: from East Greenwich, six grand jurors and twelve petit jurors; from Warwick, thirty-six grand jurors and seventy-three petit jurors; from West Greenwich, three grand jurors and five petit jurors; and from Coventry, fifteen grand jurors and thirty petit jurors.

SEC. 89. Whenever additional grand or petit jurors are required to be drawn, the superior court shall direct the clerk thereof to notify the town clerks of the several towns in the county or counties for which said court is holden of the number of such additional jurors required from each of such towns, and thereupon the town councils of such towns shall hold meetings forthwith for drawing such jurors. The court directing the drawing of such additional jurors shall require them to be drawn from the several towns as near as may be in the same proportion provided for in the annual drawing of jurors.

SEC. 90. The names drawn at any meeting for

drawing jurors shall immediately be entered on a book which shall be kept by the town clerk for that purpose, the grand and petit jurors being kept separate. Such entries shall be made in the presence of the town council, who shall attest with their signatures the correctness of the list as entered, and the town clerk shall at once send a list of said names to the clerk of the superior court for the county.

SEC. 91. The persons whose names are so drawn at said meeting held between the fifteenth day of June and the second Monday of July shall be liable to serve as grand and petit jurors, respectively, at any time before the second Monday of the July of the following year, whenever notified to appear before the court as hereinafter provided; and the persons whose names are so drawn at any other such meeting under the provisions of this chapter shall be liable so to serve at any time before the second Monday of July following the date of such drawing.

SEC. 92. From time to time, as occasion may require, the superior court shall direct notices to be sent by the clerk thereof to the town clerks of the several towns of the county or counties for which said court is holden that a certain number of grand or petit jurors are required and the time and place at which they are required to attend, which notices shall be served upon said town clerks by a sheriff or by a deputy sheriff, who shall make return of such service to said court; and every town clerk, on receiving such notice, shall select from the list of jurors drawn as aforesaid, in the order in which said names appear thereon, so many names as may be required, and shall issue notifications to the town sergeant or any constable of the town where the jurors reside, under the seal of the town council and hand of the clerk, designating therein who are grand jurors and

who are petit jurors, and the time and place at which the jurors are required to attend.

SEC. 93. The town sergeant or constable shall forthwith make service of the notification received by him, upon the persons named therein as jurors, by delivering to each of them, or by leaving at their last and usual place of abode, a notice substantially in the following form:

STATE OF RHODE ISLAND AND PROVIDENCE PLAN-  
TATIONS.

SC.

*To*

*Greeting:*

You are hereby notified that you have been drawn as a                    juror for the superior court for the county (or counties) of                    , and you are required to attend the said court to be holden at on the                    day of                    , at                    o'clock in the forenoon.

*Sergeant.*

*Constable.*

SEC. 94. Such notification, when served, shall be returned forthwith by the officer serving the same to the clerk of the court for which the jurors were drawn. The sergeant or constable shall be paid fifty cents out of the town treasury for warning each person.

SEC. 95. Every officer charged with a notification to any person drawn as juror, who shall neglect to serve and return the same as herein required, shall for each offence be fined twenty dollars.

SEC. 96. No person shall serve on any grand or petit jury in the courts of this state, unless he shall have been drawn as hereinbefore provided.

SEC. 97. No person summoned shall be qualified to serve as a juror, who has served as such within

Amended  
Cap 377  
Jan. '08.

28 R. I. 471.



two years next preceding the time when he shall be so summoned; and the court shall, upon calling the person so summoned, inquire of him if he has so served.

Amended  
Cap. 379  
Jan. '09.

SEC. 98. No person summoned as a petit juror shall be required to serve for more than two weeks in any year in which he may be summoned; unless at the expiration of such period of two weeks he shall be actually serving on a jury theretofore impanelled to try an issue then pending and undetermined; in which case he shall continue to serve until such trial is concluded. Every person summoned as a grand juror shall serve as such in the year for which he is summoned for such time as the court may require: *Provided*, that no person serving on a grand jury which has presented its report to the court shall be required to serve again during the current court year.

SEC. 99. No person summoned as a juror shall be excused from serving as such juror, unless on account of his mental or physical disability, or the serious illness of some member of his immediate family; except that jurors either before or during their term of service may be temporarily excused, provided that they be required to serve their term or the remainder thereof, as the case may be, at some time before the second Monday in July following the time when they shall have been so summoned to attend said court.

SEC. 100. Every person duly notified to attend any court as juror who shall not attend as required or give satisfactory excuse to the court for not attending, or shall absent himself therefrom without leave of the court, shall be brought before the court, and upon being adjudged in contempt, shall be fined not less than twenty dollars.

SEC. 101. All fines incurred by jurors and persons

returned or notified as jurors, under this chapter, shall be levied and collected to the use of the state by warrant of distress from the court, directed to the sheriff or his deputy of the county in which such person dwells or his estate is to be found.

SEC. 102. The person and estate of every juror attending any court in this state shall be exempt from all process in any civil action during the period of his attendance on the court, and for three days next before the time he shall be required to appear and for the three days next after he shall be discharged.

SEC. 103. The service of all process, contrary to the preceding section, shall be void.

SEC. 104. In complaints, indictments, and penal actions for the recovery of any sum of money or other thing forfeited, it shall not be cause of challenge to a juror that he resides or is liable to pay taxes in any town which may be benefited thereby.

SEC. 105. Grand and petit jurors, before acting as such, shall take the oath prescribed for them in the following forms:—

28 R. 1.476

#### GRAND JUROR'S OATH.

You severally and solemnly swear (*or affirm*) that as members of the grand inquest for the body of the county (*or counties*) of                      you will diligently inquire and true presentment make of all such crimes and misdemeanors cognizable by this court as shall come to your knowledge; the state's counsel, your fellow's and your own, will keep secret; will present no person for envy, hatred, or malice; neither will you leave any person unpresented for love, fear, favor, affection, or hope of reward; but you will present things truly, as they come to your knowledge, according to the best of your understanding: so help you

God. [*Or*: This affirmation you make and give upon peril of the penalty of perjury.]

PETIT JUROR'S OATH IN CRIMINAL CASES.

You swear (*or*, affirm) that you will well and truly try and true deliverance make between the State of Rhode Island and Providence Plantations and the prisoner (*or*, defendant) at the bar according to law and the evidence given you: so help you God. [*Or*, This affirmation you make and give upon peril of the penalty of perjury.]

PETIT JUROR'S OATH IN CIVIL CASES.

You swear (*or*, affirm) that in all cases between party and party, that shall be committed to you, you will give a true verdict therein, according to law and the evidence given you: so held you God. [*Or*, This affirmation you make and give upon peril of the penalty of perjury.]

SEC. 106. The foreman of every grand jury shall have full power and authority to administer all necessary oaths and affirmations to witnesses who shall be examined before the grand jury.

SEC. 107. No person shall be disqualified to act as a juror in any case in which the state is directly or indirectly a party, by reason of his being a citizen thereof.

SEC. 108. On the day when the petit jurors are summoned to attend at a court in any county for the trial of either civil or criminal cases, the clerk shall cause the name and place of abode of each person summoned as a juror to be written upon a separate paper, all of which papers shall be as nearly as may be of the same size, and shall cause them to be placed in a box provided for that purpose. When a case is



brought on to be tried, the clerk, in open court, shall shake the papers thoroughly, and shall then draw out twelve papers one after the other. If any of the persons whose names are so drawn do not appear, or are excused, or are set aside, the clerk shall draw out other papers until the names of twelve are drawn who appear and are not excused or set aside. The said twelve men shall be duly sworn and impanelled, and shall be the jury to try the issue, and one of them shall be appointed foreman by the court. The names of the jurors so sworn shall be kept by themselves, and, when the verdict of the jury has been recorded or when the jury has been discharged by consent of parties or by leave of court, shall be returned to the box; and this process shall be repeated in each case when an issue is brought on to be tried by the jury; but if an issue is so brought on before the verdict in any other case has been recorded or the jury in such case has been discharged, the court may order a jury for the trial of such issue to be impanelled, by the drawing, in manner aforesaid, of papers from those then remaining in the box.

SEC. 109. The court shall, on motion of either party in a suit, examine on oath a person who is called as a juror therein, to know whether he is related to either party, or has any interest in the cause, or has expressed or formed an opinion, or is sensible of any bias or prejudice therein; and the party objecting to the juror may introduce any other competent evidence in support of the objection. If it appears to the court that the juror does not stand indifferent in the cause, another shall be called in his stead for the trial of that cause.

SEC. 110. Upon motion of the attorney-general or of the attorney for the defendant in a criminal case, the jury impanelled and sworn to serve therein shall

38 R. 1. 540

29 R. 1. 50

SEC. 463. When a district court shall sentence a person for an offence, it shall fix the amount of the recognizance which shall be required to discharge from imprisonment if an appeal shall be claimed, and shall note the same upon any mittimus issued upon the sentence.

SEC. 464. Upon a claim of appeal from the sentence of a district court, the appellant, in order to be discharged from immediate imprisonment upon such sentence, shall enter into a recognizance, before one of the persons before whom an appeal may be claimed, in the sum fixed by the court as aforesaid, with surety or sureties to the satisfaction of the person taking such recognizance, conditioned that the appellant shall appear in the superior court whenever his appeal is called for trial, and there prosecute said appeal with effect, and abide or perform the order or sentence which the superior court may make or impose in such case, and that he will in the meantime keep the peace.

SEC. 465. Every person claiming an appeal from a sentence of a district court, who shall fail to enter into such recognizance in the court or in the office of the clerk of the court appealed from, shall forthwith upon sentence be committed to the penal institution as sentenced, there to remain until he enters into a recognizance as is hereinbefore provided or is discharged pursuant to law. Whenever an appellant has earned by labor at any penal institution a sum equal to the amount of the fine and the costs in the case in which he was committed, including all costs accruing at such institution, and has served the full term of imprisonment for which he was sentenced, the jailer, or other person having charge of such institution, shall apply, with the consent of such appellant, the amount so earned by him to the settle-

Amended by P. L.  
Cap 1337 Jan 1897

ment of such fine and costs, and the appellant shall then be discharged.

SEC. 466. The person taking a recognizance shall forthwith send the same to the superior court, and if the recognizance is taken before some person other than the justice or clerk of the court appealed from, notice of the taking of the recognizance shall be certified under the hand of such person to the clerk or justice of the court appealed from. On notice of a claim of appeal or of the taking of such recognizance, the clerk or justice of the court appealed from shall forthwith certify and transmit all the papers in the case to the clerk of the superior court, who shall receipt for the same.

SEC. 467. The assignment-day for appeals in criminal cases, in the superior court, shall be the assignment-day therein which occurs next after ten days from the date of the sentence appealed from. All such appeals shall be tried by the attorney-general, except as otherwise provided.

SEC. 468. Every appellant who shall have been sentenced to pay a fine and the costs only, having given recognizance as aforesaid, may, at any time before the assignment-day of his appeal, pay to the clerk of the superior court the fine and costs which have accrued, and thereupon the recognizance taken upon the appeal shall be discharged.

SEC. 469. All criminal appeals shall be heard and tried in the superior court with a jury.

SEC. 470. All appeals from any court having jurisdiction of offences against town or city ordinances, shall be taken and shall proceed according to the provisions of this chapter, and in such appeals the recognizance may be taken by either of the officers or persons hereinbefore designated and authorized to take recognizances.



## CHAPTER 26.

## OF RELIEF FROM JUDGMENT IN CERTAIN CASES.

SECTION 471. A party or garnishee in any action or proceeding in the superior court or in any district court wherein no trial has been had, against whom a judgment has been rendered on nonsuit, default, or report of referees, by reason of accident, mistake, or unforeseen cause, may, within one year after such judgment, petition the supreme court for a trial; and the supreme court may order a trial in the action or proceeding in the court in which such judgment was entered, upon such terms as the supreme court shall prescribe. **33 R. I. 89**

SEC. 472. A party or garnishee in any action or proceeding in the superior court in which a trial has been had which was not full, fair, and impartial, may at any time within one year after verdict or decision petition the supreme court for a new trial; and the supreme court may, with or without terms, order a new trial in the superior court. **32 R. I. 3/2, 33 R. I. 89**

SEC. 473. When any person is aggrieved by any order, decree, decision, or judgment of the superior court or of any probate court or town council, and from accident, mistake, unforeseen cause, or lack of evidence newly discovered, has failed to claim or prosecute his appeal, or to file or prosecute a bill of exceptions, or motion, or petition for a new trial, the supreme court, if it appears that justice requires a revision of the case, may, upon petition filed within one year after the entry of such order, decree, decision, or judgment, allow an appeal to be taken and prosecuted, or a bill of exceptions or a motion for a new trial to be filed and prosecuted, upon such terms and conditions as the court may prescribe.

**29 R. I. 364, 30 R. I. 425, 33 P. I. 90**  
458

## CHAPTER 27.

## OF CERTIFICATIONS, NEW TRIALS, AND EXCEPTIONS.

SECTION 474. Whenever, in any action or proceeding, civil or criminal, pending before any court, the constitutionality of an act of the general assembly shall be brought in question upon the record, the court shall forthwith certify the question to the supreme court to be heard and determined.

30 R. L. 379,  
419.

SEC. 475. Whenever the constitutionality of any act of the general assembly shall be brought in question in the trial of a criminal cause in any court, the decision of the question shall be reserved, and the trial of the case in other respects shall proceed as if the statute were constitutional; and if the defendant shall be found guilty, sentence shall be stayed, and the constitutional question raised, together with a record of the case, and a transcript of the testimony, or so much thereof as pertains to the constitutional question, shall be certified and transmitted forthwith to the supreme court for decision.

422  
423  
27 R. L. 425

SEC. 476. If the party raising any such constitutional question shall fail to appear in the supreme court and prosecute the cause in which the question is raised, the cause shall be remanded to the court from which it was certified, and such court shall then proceed in the same manner as if the question had not been raised; and said question shall not be raised again in said cause.

SEC. 477. Whenever a civil action, pending in a district court or in the superior court, is at issue on its merits, and the parties shall file in the clerk's office an agreed statement of the facts in such action, the court shall certify the action to the supreme court to be there heard and determined. After having de-

31 R. L. 78

cided the action the supreme court shall send back the papers therein, with its decision certified thereon, to the court from which the action was certified, which shall enter final judgment upon the decision.

SEC. 478. If in any proceeding, civil or criminal, in the superior court or in any district court, prior to the trial thereof on its merits, any question of law shall arise which in the opinion of the court is of such doubt and importance, and so affects the merits of the controversy that it ought to be determined by the supreme court before further proceedings, or if a motion in arrest of judgment be made, the court in which the cause is pending may certify such question or motion to the supreme court for that purpose and stay all further proceedings until the question is heard and determined.

SEC. 479. Whenever any proceeding or question has been certified to the supreme court under the provisions of this act, the clerk of the court by which such certification is made shall forthwith transmit the papers to the supreme court, and the parties shall follow the cause to said court.

SEC. 480. The supreme court, after having decided any cause or any question certified to it by a district court or the superior court, shall send back the papers in the cause, with its decision certified thereon, to the court from which such question or cause was certified, where all further proceedings shall be had.

#### EXCEPTIONS.

SEC. 481. Any person interested in a probate or other appeal, and any party to a civil action heard on its merits by the superior court without a jury, aggrieved by a ruling, decision, or finding of the court upon any issue of fact or matter of law, or upon a



motion for a new trial for newly discovered evidence, may except thereto.

SEC. 482. The accused in a criminal proceeding, and any party to a civil action, or any person interested in a probate or other appeal, pending in the superior court, tried by a jury, aggrieved by any ruling, direction, or decision of the superior court upon any matter of law or upon a motion for a new trial, may except thereto.

SEC. 483. Exceptions to rulings, directions, and decisions made during a hearing in a cause heard by the court without a jury or during a trial by a jury, shall be taken immediately. Exceptions to a decision upon a motion for a new trial or to the final decision in a cause heard by the court without a jury may be taken by filing the same in the office of the clerk within seven days after notice of the decision.

SEC. 484. The clerk shall give immediate notice to the parties, or to their attorneys of record, of final decisions in causes heard by the court without a jury, and of decisions upon motions for a new trial, in such manner as the court shall by general rule or special order prescribe: *Provided*, that if any such decision shall be rendered immediately upon the close of a hearing, such notice shall not be required.

#### NEW TRIALS.

SEC. 485. Within seven days after verdict any person or party entitled to except in a cause or proceeding tried by a jury in the superior court may file in the office of the clerk of said court a motion for a new trial for any reason for which a new trial is usually granted at common law, other than error of law occurring at the trial. Such motion shall state

<sup>18</sup> 33 R. I. 85, 89, 515.

the grounds relied upon in its support. The court, after hearing the parties, may set aside the verdict and order a new trial, with or without terms. A verdict shall not be set aside as excessive by the supreme or superior court until the prevailing party has been given opportunity to remit so much thereof as the court adjudges excessive.

30 R. 1457 SEC. 486. Within seven days after notice of decision on the merits in any action or appeal heard by the superior court without a jury, any person or party entitled to except may file in the office of the clerk of said court a motion for a new trial for newly discovered evidence. After hearing the parties the court may grant a new trial, with or without terms.

23 R. 1464 SEC. 487. The filing of a motion for a new trial shall stay judgment or sentence until seven days after decision shall be rendered thereon.

SEC. 488. The party filing a motion for a new trial shall within two days thereafter give notice of the same to the adverse party or his attorney of record.

Amended  
Cap 436  
Jan. '09. SEC. 489. Motions for a new trial shall be in order for hearing or for assignment upon the motion day occurring next after three days from the filing thereof. If notice has not been given as provided in section 488, the court shall assign said motion for hearing and order notice thereof to be given to the adverse party. Motions for new trial shall be heard and decided by the justice who presided at the trial. In case the justice, by reason of absence or disability, shall be unable to hear such motion, the same may be heard and decided by any other justice in the superior court.

## BILLS OF EXCEPTIONS.

32 R. I. 13

Ct 3945

29 R. I. 34, 215, 310

SEC. 490. Any person or party who has taken exceptions in the superior court may prosecute a bill of exceptions to the supreme court by taking the following procedure:

*First.* Within seven days after verdict or notice of decision, but if a motion for a new trial has been made, then within seven days after notice of decision thereon, he shall file in the office of the clerk of the superior court notice of his intention to prosecute a bill of exceptions to the supreme court together with a written request to the court stenographer for a transcript of so much of the testimony as may be required, and shall deposit with the clerk the estimated fees for transcribing such testimony as may be required. The filing of such notice and making of such deposit shall stay judgment or sentence until further order of the court;

*Second.* Within such time as the court shall fix, not later than fifty days after filing notice of intention to prosecute a bill of exceptions, or within ten days after the expiration of such extended time as is provided by section 72 for filing a transcript of the evidence, he shall file in the office of the clerk of the superior court his bill of exceptions, in which he shall state separately and clearly the exceptions relied upon; but no exception shall be stated therein to any ruling or decision upon any question of law theretofore certified to and decided by the supreme court in the cause. If exceptions shall be founded upon evidence and rulings thereon, or upon findings or decision of the court, or to the instructions of the court to the jury, or to a decision upon a motion for a new trial on the ground that the verdict is against the evidence or the weight of evidence or for newly

91  
92  
134  
157

28 R. I. 464  
483

29 R. I. 492  
532  
533



discovered evidence, he shall file in the office of the clerk, with his bill of exceptions, a transcript of the evidence and the rulings thereon, and of the instructions to the jury, or so much thereof as may be necessary for determination of the exceptions. Notice of the filing of such bill of exceptions shall be given to the adverse party in such manner as the court shall by rule prescribe.

28 R. 1/57. SEC. 491. In case the procedure aforesaid has been taken, judgment or sentence shall be stayed; but in case of any default in taking such procedure, judgment shall be entered or sentence imposed as if notice of intention to prosecute a bill of exceptions had not been filed, and with or without additional costs, as the court shall deem proper.

28 R. 1/57. SEC. 492. The clerk, immediately upon the filing of a bill of exceptions, shall present the same, with the transcript, if any, to the justice who presided at the trial; and if upon examination thereof, after hearing the parties, he shall find the exceptions, evidence, rulings, instruction, and findings correctly stated, he shall allow them. In all cases the exceptions and transcript shall be restored by the justice to the files of the clerk, with a certificate, signed by him, of his action thereon.

28 R. 1/57. SEC. 493. Upon a bill of exceptions being allowed and restored to the files, the clerk of the superior court shall forthwith certify and transmit the papers in the cause to the clerk of the supreme court.

28 R. 1/57. SEC. 494. If the justice who presided at the trial shall, for a period of twenty days after a bill of exceptions has been filed, fail to act upon or return the same, or shall disallow, alter, or refuse to alter the same, and either party is aggrieved thereby, the truth of the exceptions may be established before the supreme court upon petition stating the facts, filed

within thirty days after the filing of the bill of exceptions in the superior court; and thereupon the truth of the exceptions being established in such manner as the court shall by rule prescribe, they shall be heard and the same proceedings taken as if the exceptions had been duly allowed and filed. And upon such petition being filed, the supreme court may order the clerk of the superior court to certify and transmit to the clerk of the supreme court the papers in the cause.

SEC. 495. The supreme court, after deciding the questions presented in a bill of exceptions, shall remit the cause, with the papers therein, to the superior court, with direction for such further proceedings as to law and justice shall appertain: *Provided*, that when the supreme court shall find that there is no evidence to support the verdict or decision, or that the verdict or decision is founded on such error of law as to be decisive of the cause, it may order judgment entered in the superior court for the party prosecuting the exceptions; but judgment shall not be ordered against the party in whose favor the verdict or decision was rendered, until opportunity shall have been given to such party to show cause why such order should not be made.

SEC. 496. Whenever a person convicted of any crime shall file a motion for a new trial or notice of his intentions to prosecute a bill of exceptions, the superior court may require such person to give additional bail.

SEC. 497. Exceptions to decisions or rulings prior to trial shall be open to revision after verdict or final decision on the merits, but so far only as it appears to the supreme court that the verdict or final decision was erroneously affected thereby.

28 R. 1. 157.

30 R. 1. 310

30 R. 1. 256

28 R. 1. 590.

27 R. 1. 435

Ex 3681

Ex 4149

28 R. 1. 472

Ex 3913

29 R. 1. 223

30 R. 1. 144

29 R. 1. 536

29 R. 1. 331

Ex 4293

28 R. 1. 157.

27 R. 1. 575

28 R. 1. 157.

29 R. 1. 450

29 R. 1. 34

## TITLE III.

OF WRITS AND EXECUTIONS AND THE  
SERVICE THEREOF.

## CHAPTER 28.

## OF WRITS, AND WHEN ISSUABLE.

SECTION 498. Writs issuing from any court shall issue in the name of the State of Rhode Island and Providence Plantations, shall be under the seal of the court from which they issue, and shall be signed by the clerk or by one of the justices thereof.

SEC. 499. Any original writ from the superior court for any county may be sealed and signed by the clerk of the court for any county, and be made returnable in any other county where such court may sit.

SEC. 500. Every original writ or writ of mesne process issuing from the superior court, or from a district court, shall be a writ of summons unless otherwise provided.

SEC. 501. All writs issuing from the supreme or superior court shall be in such form as the court shall prescribe, except express provision by statute be made therefor.

SEC. 502. All writs shall run throughout the state, and shall be directed to the sheriffs of all the counties in the state, or to their deputies; but if the sheriff of any county be a party to the action or suit, the process, if to be served in that county, shall, in addition to the former direction, be directed to the town sergeants in the county, and may be served by any one of them not a party to such action or suit.



SEC. 503. Writs issued by a district court shall be made returnable to such court at the place and on the day and hour provided by law, to be named in such writs, and shall be directed to the sheriff, his deputies, or to either of the town sergeants or constables of the county in which the action shall be brought: *Provided*, that writs and executions issued by a district court in actions for possession of tenements or estates let or held at will or by sufferance, and in actions wherein the debt or damages demanded exceed one hundred dollars, shall be directed to the sheriff or his deputies in the county in which such action shall be brought, and service thereof shall be made by such sheriff or his deputies. In case any person upon whom it is necessary to make service of any writ or execution issued by a district court be, or has estate, in any other county than the one in which the action is brought, such writ or execution may also be directed to and served by the like officer of such other county. Every original writ issued by a district court may contain the declaration.

SEC. 504. Original writs from any district court, duly signed, and sealed may be made returnable in any other district, including writs of replevin, provided that writs of replevin shall be made returnable to the district court of the district in which the goods or chattels to be replevied are taken, attached, or detained.

#### WRITS OF SUMMONS.

SEC. 505. A writ of summons issued from the superior court shall be substantially in the following form:—

THE STATE OF RHODE ISLAND AND PROVIDENCE  
PLANTATIONS.

sc. *To the sheriffs of our several counties,*  
(SEAL) *or to their deputies, Greeting:*

We command you to summon                      of  
if to be found in your precinct, to answer the com-  
plaint of                      of                      on the return-day hereof  
(said return-day being the                      day of  
A. D. 19    ) in the SUPERIOR COURT to be holden at the  
county court-house at                      in an action of  
as by declaration to be filed in court will be fully set  
forth, to the damage of the plaintiff, as he says,  
dollars.

Hereof fail not, and make true return of this writ  
with your doings thereon.

Witness, the seal of our superior court, at  
this                      day of                      in the year

, Clerk.

SEC. 506. A writ of summons issued from a dis-  
trict court shall be substantially in the following  
form:—

THE STATE OF RHODE ISLAND AND PROVIDENCE  
PLANTATIONS.

sc. *To the sheriff of the county of                      , his*  
*deputies, or to either of the town sergeants*  
(SEAL) *or constables in said county, Greeting:*

We command you to summon                      of  
if to be found in your precinct, to answer the com-  
plaint of                      of                      at a DISTRICT COURT to  
be holden at                      in                      on the                      day  
of                      at                      o'clock in the                      - noon,  
in an action of                      [for that (*here insert the dec-*  
*laration at length*); or, as by declaration to be filed in

court will be fully set forth, *as the case may be,*] to the damage of the plaintiff, as he says,           dollars.

Hereof fail not, and make true return of this writ with your doings thereon.

Witness, the seal of the district court of the  
judicial district, at           this           day of  
in the year

, Clerk (or Justice).

SEC. 507. An original writ, commanding the arrest of any person not exempt by law from arrest, may be issued from the superior court, or from any district court—

*First.* In any action for the recovery of a debt, or of a state or town tax, the cause of which accrued previous to the first day of July in the year one thousand eight hundred seventy.

*Second.* In any action on penal statutes, or in any action of trover, detinue, trespass, trespass on the case, trespass and ejectment, trespass quare clausum fregit, and scire facias against bail in criminal cases.

*Third.* Whenever the plaintiff in an action to be commenced by such writ, his agent or attorney, shall make affidavit, to be indorsed thereon or annexed thereto, that the plaintiff has a just claim against the defendant, that is due, upon which the plaintiff expects to recover in the action commenced by such writ a sum sufficient to give jurisdiction to the court to which such writ is returnable; and also either that the defendant to be arrested is about to leave the state, without leaving therein real or personal estate whereon an execution that may be obtained in such action can be served, and, in case such defendant is not a resident of the state, that the plaintiff, or if more than one plaintiff, that some of the plaintiffs are actual residents of the state, or that the defendant to be arrested has committed fraud in fact involving





Witness, the seal of our superior court, at  
this                    day of                    in the year                    , Clerk.

SEC. 509. An original writ of arrest issued from a district court shall be substantially in the following form:—

THE STATE OF RHODE ISLAND AND PROVIDENCE  
PLANTATIONS.

SC. *To the sheriff of the county of \_\_\_\_\_, his*  
(SEAL) *deputies, or to either of the town sergeants*  
*or constables in said county, Greeting:*

We command you to arrest the body of \_\_\_\_\_ of \_\_\_\_\_  
if to be found in your precinct, and \_\_\_\_\_  
in safe custody keep, to answer the complaint of \_\_\_\_\_  
of \_\_\_\_\_, (*The remainder as in a writ of summons.*)

## WRITS OF ATTACHMENT.

SEC. 510. An original writ commanding the attachment of the real or personal estate of the defendant, including his personal estate in the hands or possession of any person, copartnership, or corporation, as the trustee of the defendant, and his stock or shares in any banking association or other incorporated company, may be issued from the superior court, or any district court, whenever the plaintiff in the action to be commenced by such writ, his agent or attorney, shall make affidavit, to be indorsed thereon or annexed thereto, that the plaintiff has a just claim against the defendant, that is due, upon which the plaintiff expects to recover in such action a sum sufficient to give jurisdiction to the court to which such writ is returnable.

SEC. 511. An original writ of attachment issued

from the superior court shall be substantially in the following form:—

THE STATE OF RHODE ISLAND AND PROVIDENCE  
PLANTATIONS.

SC. *To the sheriffs of our several counties or*  
(SEAL) *to their deputies, Greeting:*

We command you to attach the goods and chattels and real estate of                      of                      and them in safe custody keep, and also to attach the personal estate of the said                      in the hands or possession of                      of                      as trustee of the said                      , and also to attach his stock or shares in any banking association or incorporated company, to the value of                      dollars, and to summon the said                      to answer the complaint of                      of                      on the return-day hereof (said return-day being the day of                      A. D. 19                      ) in the SUPERIOR COURT to be holden at the county court-house at                      in an action of                      as by declaration to be filed in court will be fully set forth, to the damage of the plaintiff, as he says,                      dollars.

Hereof fail not, and make true return of this writ with your doings thereon.

Witness, the seal of our superior court, at  
this                      day of                      in the year                     

, Clerk.

SEC. 512. An original writ of attachment issued from a district court shall be substantially in the following form:—

THE STATE OF RHODE ISLAND AND PROVIDENCE  
PLANTATIONS.

SC. *To the sheriff of the county of                      , his*  
(SEAL) *deputies, or to either of the town sergeants*  
*. or constables in said county, Greeting:*



We command you to attach the goods, chattels, and real estate of                      of                      and them in safe custody keep, and also to attach the personal estate of the said                      in the hands or possession of                      of                      as the trustee of the said                      , and also to attach his stock or shares in any banking association or incorporated company, to the value of                      dollars, and to summon the said                      to answer (*The remainder as in a writ of summons*).

## WRITS OF MESNE PROCESS.

SEC. 513. The plaintiff in any action may, as often as may be necessary, at any time before final judgment in such action, sue out of the court in which the action shall have been commenced, a writ of mesne process commanding the attachment of the real or personal estate of the defendant, including his personal estate in the hands or possession of any person, copartnership, or corporation, as the trustee of the defendant, and his stock or shares in any banking association or other incorporated company, and may also sue out a writ of mesne process commanding the arrest of the defendant unless the defendant has been arrested in such action: *Provided*, the plaintiff, his agent or attorney, shall make affidavit, to be indorsed on or annexed to said writ, setting forth facts which would authorize an attachment or arrest upon an original writ. Such writ of mesne process shall conform, as nearly as may be, to an original writ of attachment or arrest, and shall be returnable at a time, before final judgment, to be specified in the writ.

SEC. 514. Whenever a writ of attachment can be issued by any court, it may command the attachment of the goods and chattels of the defendant and

his real estate and his personal estate in the hands or possession of any person, copartnership, or corporation, as his trustee, and his stock or shares in any banking association or other incorporated company, and may be varied so as to command the attachment of one or more of such classes of property of the defendant.

SEC. 515. Writs of replevin and scire facias shall be substantially in the following form:—

#### WRIT OF REPLEVIN.

#### THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

SC. *To the sheriffs of our several counties and*  
(SEAL) *to their deputies,* Greeting:

We command you that you replevy, if to be found within your precinct, the goods and chattels following, viz.: (*Here enumerate and particularly describe them*) belonging to of now taken (*detained, or attached as the case may be*) by of at in the county of and them deliver unto the said , provided the same are not taken, attached, or detained upon original writ, mesne process, warrant of distress, or upon execution as the property of the said ; and summon the said to appear on the return-day hereof (said return-day being the day of A. D. 19 ) in the SUPERIOR COURT to be holden at the county court-house at , to answer unto the said in a plea of replevin that the said on the day of at said unlawfully, and without justifiable cause, took the goods and chattels of the said as aforesaid, and them unlawfully detained unto this day, (*or, unlawfully detained the goods and chattels*

aforesaid, *as the case may be*) to the damage of the said , as he says, dollars.

Hereof fail not, and make true return of this writ with your doings thereon, together with the bond you shall take of the plaintiff.

Witness, the seal of our superior court, at this day of in the year

, Clerk.

#### WRIT OF SCIRE FACIAS.

#### THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

SC. *To the sheriffs of our several counties and*  
(SEAL) *to their deputies,* Greeting:

Whereas of by the consideration of the SUPERIOR COURT, holden at , on the day of , recovered judgment against of for the sum of dollars and cents, and costs taxed at as appears of record, and execution thereof remains to be done:

We command you, therefore, to summon the said to appear before the SUPERIOR COURT to be holden at the county court-house at on the day of , to show cause, if any he has why the said should not have execution against for the sums aforesaid.

Hereof fail not, and make true return of this writ with your doings thereon.

Witness, the seal of our superior court, at this day of in the year

, Clerk.

SEC. 516. The form of a writ of scire facias may be varied from the above to adapt it to use by the district court, and to service by arrest or attachment.



SEC. 517. District courts may issue writs of replevin where the goods and chattels to be replevied are of the value of five hundred dollars or less, if they were taken, attached, or detained in the district in which such district court is established. They may also try the same and award execution therein, adhering in their proceedings as near as may be to the forms prescribed by law.

SEC. 518. Whenever an original writ shall issue against more than one defendant, the forms hereinbefore given may be altered so as to combine the writ of arrest, the writ of summons and the writ of attachment, in order that the same may be served on one or more of the defendants by one form of service and on the other or others by another form of service.

SEC. 519. Every court shall adapt the form of process necessary to be issued thereby, whenever no form is prescribed, so as to conform to law and, as far as the nature of the case will admit, to the forms prescribed in this chapter.

SEC. 520. Whenever the name of any defendant or respondent is not known to the plaintiff, the writ may issue against him by a fictitious name, or by such description as the plaintiff or complainant may select; and if duly served, it shall not be abated for that cause, but may be amended with or without terms as the court may order.

SEC. 521. Whenever the clerk of any court shall be a party to an action, suit, or other proceeding, civil or criminal, all processes issuing from such court thereon shall be signed by a justice thereof.

SEC. 522. Every person who shall willfully swear falsely to any statement in an affidavit made by him, by means of which affidavit a writ of arrest or attachment shall have issued and been served by arrest or attachment, shall be deemed guilty of perjury.

SEC. 523. In any cause in equity, at or after the filing of the bill, the complainant may move the superior court *ex-parte* to issue a writ of attachment, to run against the property of the respondents or any respondent in said cause; and the court, in its discretion, if the cause be of such a nature that an attachment of property be for the proper security of the complainant, shall on such motion, properly supported by affidavits to be filed in said cause, enter an order granting a writ of attachment, which writ may command the attachment of the real and personal estate of the defendant, including his personal estate in the hands or possession of any person, copartnership, or corporation as the trustee of the defendant and his stock or shares in any banking association or other incorporated company, like a writ of attachment at law in conformity to the specific directions in said order; and shall be served in like manner and be subject to like incidents as a writ of attachment at law, and shall be returnable at such time, and for such ad damnum, as shall be directed in said order and stated in such writ. And all property so attached shall be held for the security of any final decree which the complainant may obtain in his favor in said cause in pursuance of the directions of the order granting such writ of attachment.

SEC. 524. Actions at law sounding in tort may be instituted against non-residents having property within the state by original writ of attachment in form as provided by law; and such original writ of attachment shall be issued from the superior court or any district court wherever the plaintiff in the action to be commenced by such writ, his agent or attorney, shall make affidavit, to be endorsed thereon or annexed thereto, that the defendant is a non-resident, and that the plaintiff has a just cause of

action against the defendant upon which the plaintiff expects to recover a sum sufficient to give jurisdiction to the court to which such writ is returnable.

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## CHAPTER 29.

### OF THE SERVICE OF WRITS.

SECTION 525. Every original writ issuing from the superior court shall be returnable thereto on the day named in such writ, and shall be served not less than ten nor more than sixty days before the return-day thereof, except in those cases in which special provision by law shall be made to the contrary; and every original writ issuing from a district court shall be served not less than six nor more than twenty days before the return-day thereof: *Provided*, that writs issued in civil actions returnable to any court on a legal holiday shall not thereby abate, but may be entered on the next court day of such court for civil business with the same effect as if made returnable at such later court day, and in such event all periods of time for pleading and for action of every character in such case shall begin to run from such court day next following said legal holiday.

27 R. 1. 554  
32 R. 1. 299  
SEC. 526. A writ of summons shall be served by reading the same to the person to be summoned, or by leaving an attested copy thereof with him or at his last and usual place of abode with some person living there; or, if such writ be issued against any company incorporated under the laws of this state, by leaving an attested copy of such writ, if a bank, with the cashier, treasurer, or secretary thereof; if an insurance company, with the president or secretary thereof; and if any other company incorpo-



rated under the laws of this state, with the treasurer thereof, or with the agent or superintendent thereof, or with the person executing the duties of treasurer thereof, or at the office of such corporation with some person there employed, or if it have no such officer or office within this state then the same may be served by leaving an attested copy thereof with any stockholder or member of such corporation, or service may be made in such other mode as the charter of such corporation may prescribe: *Provided*, that in actions for recovery of tenements let or held at will or by sufferance, service of a writ of summons may be made by personal service as above prescribed or by posting an attested copy thereof on the main door of the premises. And when a writ of summons shall be issued against a foreign corporation doing business in this state, it shall be served by leaving an attested copy thereof with any clerk or agent in this state of such corporation, or with the attorney of such corporation appointed under the law upon whom service may be made as against such corporation.

#### SERVICE OF WRITS OF ARREST.

SEC. 527. Every officer who shall arrest any person by virtue of any writ of arrest, in a civil action, shall keep such person in safe custody until he be discharged pursuant to law.

SEC. 528. Every officer who shall so arrest any person shall let the person arrested to bail, upon his giving sufficient surety for his appearance at the court to which such writ or process shall be returnable and to abide the final judgment which shall be rendered thereon.

SEC. 529. Whoever shall become bail for any person may give bond to the sheriff, if the writ or pro-

cess shall be served by the sheriff or his deputy; and if the writ or process shall be served by a town sergeant or constable, the bail bond in such case shall be given to the officer serving the same.

SEC. 530. Instead of giving bond as aforesaid, the person becoming bail may indorse his christian name and surname on the back of the writ or process, which shall hold him as bail to the same extent as if he had executed and delivered a formal bail-bond.

SEC. 531. Every person committed to jail in any county, except the county of Providence, by virtue of an arrest on any writ or process in any civil action, or by surrender of former bail in the same action, shall be let to bail or to new bail, as the case may be, in manner before provided, at any time before the rendering of final judgment on the original writ on which the arrest was made.

SEC. 532. Every person committed to jail in the county of Providence, on any writ or process in any civil action or by surrender of former bail in the same action, may be let to bail or to new bail, as the case may be, by the keeper of said jail or by the officer who served the writ or process, at any time before final judgment shall be rendered on the writ on which the arrest was made, upon his giving sufficient surety for his appearance at the court to which such writ is returnable, and to abide the final judgment which shall be rendered thereon.

SEC. 533. In case bail be taken by said keeper, the person becoming bail shall give bond to the keeper in a penal sum equal to the damages laid in the writ; but if bail be taken by the officer who served the writ, the person becoming bail may give such bond to the officer, or may indorse his christian name and surname on the back of such writ or process, which shall hold him as bail as in other cases.

## SERVICE OF WRITS OF ATTACHMENT.

SEC. 534. The officer commanded by any original writ or writ of mesne process to attach real estate, or the right, title, and interest of any defendant therein, shall attach the same by leaving an attested copy of the writ, with a copy of his doings thereon, with the town clerk of the town in which the real estate shall be situated, unless there be a recorder of deeds of such town, in which case he shall leave the copy with said recorder of deeds; and the town clerk or recorder of deeds, as the case may be, shall note upon the copy the time, as near as may be, when the same was left with him, and shall also enter in a book, to be kept by him for that purpose, the names of the parties in the writ, the amount of the damages claimed, the time when the copy was left with him, and the court to which and the time when the writ is returnable, and shall be entitled to demand and receive from the officer a fee of twenty-five cents in each case; and the officer shall in all cases also leave an attested copy of the writ, with a general reference thereon to the real estate attached thereby, together with a statement of the date and time of day of the attachment, with the defendant personally, or with some person living at his last and usual place of abode, if any he have, within the precinct of the officer; or if he have none, then the officer shall send the copy by mail to the defendant, if his address be known to or can be ascertained by the officer, and shall also in the last-named event leave a like copy with the person, if any, in possession of such real estate.

SEC. 535. Whenever an original writ or writ of mesne process shall command the officer to whom the same is directed to attach the goods and chattels of a defendant, the officer shall attach the same to the



value commanded in the writ, if so much can be found by him, and may attach any less value if the plaintiff or his attorney shall give order therefor.

SEC. 536. The officer making such attachment shall serve the defendant, as provided in section 525, with an attested copy of the writ, having indorsed thereon a general reference to the class or kind of goods and chattels so attached, together with a statement of the place in which they were found, and of the date and time of day of the attachment, by delivering such copy to the defendant, if he can be found by the officer within his precinct, or by leaving the same with some person living at the last and usual place of abode of the defendant; or if he have none within the precinct of the officer, by sending the copy by mail to such defendant, if his address be known to or can be ascertained by the officer, and in the last-named event by leaving such copy with some person, if any there be, in possession of the goods and chattels at the time of their attachment.

SEC. 537. The officer shall keep the goods and chattels so attached in his custody, as security to satisfy such judgment or decree as the plaintiff may obtain, until by due process of law either he shall sell the same or they shall be withdrawn from his custody.

SEC. 538. The defendant in any writ upon which goods and chattels shall have been attached may, at any time within forty-eight hours, exclusive of Sundays and legal holidays, after such attachment, deliver to the officer a bond in the penal sum of the amount of damages laid in the writ, signed by the defendant or some one in his behalf, with surety or sureties to the satisfaction of the officer, with a condition therein that the same shall be null and void if the final judgment or decree in the action or cause

in which the writ was served shall be forthwith paid and satisfied after the rendition thereof.

SEC. 539. If the defendant in the writ shall deem the damages laid therein excessive, he may, before giving bond under the provisions of this chapter, complain in writing to any justice of the court from which the writ issued, requesting their reduction; and the justice may, after due notice to the plaintiff in the writ, or to his attorney, and upon cause shown, reduce the damages, and the amount so fixed shall be the penal sum in such bond.

SEC. 540. Upon accepting a bond given to satisfy a judgment or decree as herein required, the officer shall lodge the same with the clerk of the court, if there be a clerk, otherwise with the justice of the court, to which the writ in the action shall be returnable, and shall forthwith surrender the goods and chattels attached by him to the person whose interest therein shall have been attached, or from whose possession the same were taken, by virtue of the writ.

SEC. 541. If the defendant in such writ shall not, within the said forty-eight hours, either give such bond or a bond for the value of the goods and chattels attached, in the manner by law provided, such officer shall make an inventory of the goods and chattels by him attached upon the writ, and return the same as a part of his doings in his return upon the writ.

SEC. 542. Every officer having goods and chattels attached by him in his custody shall surrender the same, at any time after such attachment and before final judgment or decree, to the person whose interest therein has been attached, or from whose possession they have been taken, upon being tendered a bond by the defendant or some one in his behalf, with sufficient surety or sureties to the satisfaction of such officer, in double the value of the goods and chattels

so attached, such value to be determined by the sworn appraisal of any two of three men, one chosen by the sheriff and one by the defendant or his attorney and the third by the creditor or his attorney, or in the penal sum of the amount of damages laid in said writ, with condition that such bond shall be null and void if, at any time after final judgment or decree rendered in the action or cause in which such attachment shall have been made, upon request therefor, the appraised value of the goods and chattels shall be paid, or the said goods and chattels shall, in as good order and condition as when surrendered, be returned to the officer taking the bond, or to any officer who shall be charged with the service of an execution issued upon the judgment or decree rendered in the action or cause, unless the judgment or decree shall have been paid, or shall be immediately paid, together with the costs upon the execution, upon the making of such request for the return of such goods and chattels or the payment of said appraised value.

SEC. 543. If the defendant in any writ shall deem the damages laid therein excessive, or if the property, either real or personal, held under any attachment, shall greatly exceed in value the amount of the damages laid in the writ, the defendant may, at any time before final judgment or decree, complain in writing to any justice of the court from which the writ issued, requesting the reduction of the amount of the damages or a release of a portion of the property attached; and such justice may, after due notice to the plaintiff in the writ or to his attorney, and upon cause shown, order the damages to be reduced or a part of the property attached to be released.

SEC. 544. Whenever a writ shall command the attachment of the shares of the defendant in any



corporation, or of his personal estate in the hands of any person, copartnership, or corporation, as trustee, it shall be served by leaving an attested copy thereof, having indorsed thereon the date and time of day of the service, with the person or some member of the copartnership named in the writ as trustee, or at the usual place of business of such person or copartnership with some person there employed; or if the trustee, or the corporation whose shares shall be directed to be attached, shall be a bank, with the cashier, treasurer, or secretary thereof; if an insurance company, with the president or secretary thereof; and if any other corporation, it shall be served by leaving an attested copy thereof, having indorsed thereon the date and time of day of such service, with the treasurer thereof, or the person executing the duties of treasurer thereof, or with the attorney of the corporation appointed with authority to accept service of process against the corporation in this state, or with any other officer thereof, or with the agent or superintendent thereof, or at the office of such corporation with some person there employed, and shall tender to the person upon whom service is made the sum of two dollars and his travelling fee as witness in the superior court, and the sum of one dollar and like travelling fee if the writ is returnable in any other court; and the officer shall also leave an attested copy of the writ, so indorsed, with the defendant or at his last and usual place of abode, with some person living there, or if he have none within the precinct of the officer, the latter shall send the copy to the defendant by mail, post paid, if his address is known to or can be ascertained by the officer.

SEC. 545. Whenever any writ of attachment shall be duly served by summons upon the defendant by

any officer, properly charged with the service thereof, in the manner provided by this chapter, such service shall be sufficient to bring the cause of action upon which said writ shall have been issued to trial upon its merits, whether any valid attachment of property shall have been made upon said writ or not.

SEC. 546. If the property attached be in one county and the defendant be, or have his usual place of abode, in another county, the attachment may be made by any proper officer of the county where the property is situated, and the defendant may be summoned where he may be found or have his usual place of abode by the officer making the attachment or by any like officer of the county where the defendant may be found or may have his usual place of abode: *Provided*, that the officer making the attachment shall not be required to send a copy of the writ by mail to the address of the defendant in case the summons shall be served as by law provided. If, in any writ, citation, or other process issued from the supreme or superior court, the defendant or respondents therein named reside in different counties, the proper officer making service of such writ, citation, or other process in the county where the same is returnable may summon such defendants or respondents residing in the other counties.

SEC. 547. Whenever a writ shall command the attachment of the shares of the defendant in any corporation, or of his personal estate in the hands or possession of any person, copartnership, or corporation, as trustee, the defendant may, at any time after the service of the writ upon the trustee, and before final judgment or decree, deliver to the officer who served the writ a bond, in the penal sum of the amount of damages laid in the writ, signed by the defendant or some one in his behalf, with surety or

sureties to the satisfaction of the officer, with a condition therein that the same shall be null and void if the final judgment or decree in the action or cause in which the writ was served shall be forthwith paid and satisfied after the rendition thereof.

SEC. 548. Upon the acceptance of such bond by the officer, he shall forthwith deliver to the person, copartnership, or corporation named as trustee in the writ, a certified copy of the writ, with an indorsement thereon, signed by said officer, setting forth therein that he has accepted such bond and released the shares or personal estate in the hands or possession of such trustee from the attachment; and thereupon the shares or personal estate in the hands or possession of the trustee shall become discharged from the attachment.

SEC. 549. In case the writ shall have been returned to the court to which it is made returnable, and duly entered therein, or in case the officer who served the writ shall, from any cause, be unable to accept such bond and release the shares or personal estate in the hands or possession of such trustee from the attachment, then the bond given to release the attachment shall be delivered to the plaintiff or his attorney named on said writ, the bond running to the plaintiff and with surety to the satisfaction of the plaintiff or such attorney; and upon the acceptance of such bond by said plaintiff or such attorney, said plaintiff or his attorney shall thereupon give to said defendant a certificate signed by such plaintiff or his attorney that he has accepted said bond and released said shares or personal estate from attachment. In case of the refusal of said plaintiff or his attorney to act upon said bond or to receive a proper bond and give such certificate, said defendant may petition the court to which the writ is returnable to



accept a bond running to the plaintiff and satisfactory to the court, and release said shares or personal estate from attachment.

SEC. 550. After an attachment of property, subsequent attachments of other property of the defendant may be made by any proper officer at any time before the defendant is served with the writ; and if need be, the plaintiff may amend his writ for the purpose of having subsequent attachment made.

SEC. 551. If no property shall have been attached on any writ of attachment, no costs of service of the writ of attachment shall be taxed against the defendant, but only the costs on the summons made therein.

SERVICE UPON NON-RESIDENT GUARDIANS, EXECUTORS, AND ADMINISTRATORS.

SEC. 552. Service of any process at law or in equity may be made by any disinterested person upon any non-resident guardian, executor, or administrator, appointed or approved by any court of probate in this state, either by reading the process to him or by leaving an attested copy thereof with him, or by leaving such copy at his last and usual place of abode with some person living there; and in the latter case by also publishing notice to him in such manner as the court, out of which such process issues, shall direct. And if said guardian, executor, or administrator shall not appear and answer such process, said probate court may, in its discretion, remove such guardian, executor, or administrator.

SEC. 553. A disinterested person, serving process as aforesaid, shall make affidavit of the service thereof, and of the manner in which, the time when, and the place where, the service was made; or the ser-

vice thereof may be made by the admission of service by said guardian, executor, or administrator, on the back of the process, and by his acknowledgment thereof before some officer authorized to administer oaths.

GENERAL PROVISIONS RELATING TO SERVICE BY ATTACHMENT.

SEC. 554. The officer to whom a writ of attachment shall be directed, commanding therein the attachment of different kinds of property, shall be entitled to charge for only one attested copy of the writ for any one person with whom the copy is required to be left.

SEC. 555. The officer shall give to any defendant, his agent or attorney, or any other person interested in any action in which a writ of attachment shall have been served, immediately upon his request, an attested copy thereof with his doings thereon, upon being tendered therefor a fee of twenty cents for every page of two hundred words of such copy.

SEC. 556. The officer who shall make any attachment shall, in his return, set forth the time of the day when the attachment was made, to the end that the priority of attachment may be known.

SEC. 557. Nothing herein contained shall be so construed as to destroy or impair any lien or claim of any person or body corporate upon any stock or shares attached under the provisions of this chapter.

SEC. 558. In case any officer shall distrain for taxes, or by any warrant of distress whatsoever, the goods and chattels of any person, he shall proceed in the same manner and be holden to the same rules as hereinbefore directed in case of attachments in civil actions.

SEC. 559. No civil process whatsoever shall be served on Sunday, but every such service shall be utterly void.

SEC. 560. No corporation, unless incorporated by the general assembly of this state, or under general law of this state, excepting national banking associations or other corporations existing under the laws or by the authority of the United States, shall carry on within this state the business for which it was incorporated, or enforce in the courts of this state any contract made within this state, unless it shall have complied with the following sections of this chapter.

SEC. 561. Every such foreign corporation shall appoint by written power some competent person resident in this state as its attorney, with authority to accept service of all process against such corporation in this state, and upon whom all process, including the process of garnishment, against such corporation in this state may be served, and who, in case of garnishment, when the fees therefor shall have been paid or tendered, shall make the affidavit required by law in such cases, and who shall cause an appearance to be entered in like manner as if such corporation had existed and been duly served with process within this state.

SEC. 562. A copy of such power of attorney, duly certified and authenticated, shall be filed with the secretary of state; and copies thereof, duly certified, shall be received in evidence in all courts of this state.

SEC. 563. If such attorney shall die or resign or be removed, the corporation shall make a new appointment as aforesaid and file a copy with the secretary of state as above prescribed, so that at all times there shall be within this state an attorney



authorized to accept service of process and to enter an appearance as aforesaid; and no such power of attorney shall be revoked until after a like power shall have been given to some other competent person resident in this state, and a copy thereof filed as aforesaid.

SEC. 564. Service of process upon such attorney shall be deemed sufficient service upon his principal.

SEC. 565. No person shall act within this state, as agent or officer of any foreign corporation, unless such corporation shall have appointed an attorney as hereinbefore provided, and every person so acting shall be fined one thousand dollars.

SEC. 566. The preceding six sections shall not be held to apply to foreign insurance companies doing business in this state, but such companies shall continue to be governed by chapter 182 of the General Laws.

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## CHAPTER 30.

### OF CERTAIN PROVISIONS CONCERNING ATTACHMENTS.

SECTION 567. In all attachments of real estate, or of goods and chattels, or of personal estate in the hands of a trustee, or of stock or shares in any banking association or other incorporated company, he who shall first procure any attachment to be made for any just debt or damages shall be entitled to have his debt or damages satisfied before any other demand for which the same shall be attached or taken by execution at the suit of any other person, and all others in order of attachment.

SEC. 568. Whenever any officer shall attach on any writ any live animals or any goods or chattels

which are liable to perish or waste, or to be greatly reduced in value by keeping, or which cannot be kept without great and disproportionate expense, any justice of the court out of which the writ shall have been issued may, on the written application of any person interested in the property, cause the defendant and the attaching creditor, or complainant, their attorneys or agents, to be notified to appear at a time and place appointed for that purpose, to show cause why the same should not be sold.

SEC. 569. If, after reasonable notice, no person appear, or no sufficient cause to the contrary be shown, said justice may direct the officer to sell the same in such manner, on such notice, and at such time, as said justice may prescribe; and the officer shall immediately pay the proceeds of such sales, after deducting therefrom the necessary charges thereof, into the registry of the court, there to be held as security to satisfy the judgment or decree which the attaching creditor or complainant may recover.

SEC. 570. Personal estate, when mortgaged and in the possession of the mortgagor, and while the same is redeemable at law or in equity, may be attached on writ of attachment against the mortgagor, in the same manner as his other personal estate.

SEC. 571. When attached, the mortgaged estate may be sold upon the application of the mortgagee or of either of the parties to the suit, in the manner provided for the sale of perishable goods and chattels when attached.

SEC. 572. Upon any such sale, the attaching officer shall first apply so much of the proceeds of the sale as may be necessary to pay the amount for which the said property was mortgaged, with such deduction for interest for the anticipated payment, or allowance for damages for such anticipated payment,

as may be allowed by the justice directing the sale; and the officer shall pay only the balance into the registry of the court for the purposes of the attachment.

SEC. 573. The plaintiff in any such attachment may redeem the mortgaged estate in the same manner as the mortgagor might have done; and in case of such redemption, the plaintiff shall have the same lien on the property for the amount paid by him, with interest, as the mortgagee had.

SEC. 574. If the mortgage be not redeemed by the plaintiff, or the mortgaged property sold as before mentioned, before the time of redemption expires, the attachment shall become void.

SEC. 575. Whenever any banking association or incorporated company shall be served with a copy of a writ attaching its stock or shares thereof, if a bank, its cashier, if an insurance company, its president or secretary, and if any other corporation, its treasurer or the person executing the duties of treasurer, shall render an account upon oath to the court to which the writ shall be returnable of what stock or shares the defendant had in such company at the time of the serving of such writ. Such account shall be filed, in any district court, on or before the entry-day of the case, or within the period of six days after such entry day; and in any other court on or before the assignment day of the case.

SEC. 576. Whenever a copy of a writ shall have been left for the purpose of attaching the personal estate of the defendant in the hands or possession of any person, copartnership, or corporation, as trustee, such person, or some member of such copartnership, or some officer of such corporation, shall render an account in writing, upon oath, to the court to which the writ is returnable, of what estate,



if any, such person, copartnership, or corporation, respectively, had in his or its hands or possession at the time the writ was served; or if he or it had none, either directly or indirectly, shall state the fact in writing, under oath, to the court. Such account shall be filed, in any district court, on or before the entry day of the case, or within the period of six days after such entry day; and in any other court, on or before the assignment day of the case. When the personal estate of a defendant other than money or credits shall be attached in the hands of a person as trustee, if such person shall surrender the personal estate to the officer making the attachment, the officer shall take possession of the same and make due return thereof upon the writ of attachment.

SEC. 577. The disclosure made by virtue of either of the two preceding sections shall be sworn to before any person authorized to administer oaths, and shall be filed with the clerk of the court, if there be a clerk; otherwise, with the court to which the writ shall be returnable. The party filing the disclosure shall be entitled, on tendering a copy thereof and a fee of twenty-five cents to the clerk or judge, as the case may be, to have the said copy certified by said clerk or judge with whom the original is filed, and a certificate indorsed on such copy of the fact and date of filing.

SEC. 578. Either party may examine the person so making oath, upon written interrogatories, to be filed with the clerk, or court, if there be no clerk; and such person, after having been furnished with a copy of such interrogatories, shall answer the same responsively in writing, under oath administered as aforesaid, and shall return the answer to the clerk, or to the court, if there be no clerk, at such time as

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the court shall by general rule or by special order direct.

SEC. 579. If it shall appear by the disclosure of the person making oath, that the person, copartnership, or corporation, served with a copy of the writ, had at the time of service thereof any personal estate of the defendant in his or its hands, then the trustee shall be charged to the amount disclosed if less than the judgment or decree, otherwise to the amount of the judgment or decree, and the plaintiff, after having recovered judgment or decree against the defendant, may bring his action against the trustee to recover the amount for which he is charged, with interest and costs. 29 R. 1. 210

SEC. 580. Whenever it shall appear that several persons, copartnerships, or corporations had property of the defendant as such trustees, the plaintiff may sue each separately and recover the amount in his hands, until such plaintiff shall receive full payment of his judgment or decree against the original defendant, with interest and costs.

SEC. 581. Any trustee, after final judgment or decree against the defendant, may satisfy the judgment or decree, or any part thereof, to the amount of the estate attached in his hands, before any suit shall be brought against him therefor; and such payment shall avail for his discharge, as against both plaintiff and defendant, for the amount thereof. 29 R. 1. 211

SEC. 582. If it shall appear by the disclosure that the personal estate in the hands of the trustee belonging to the defendant did not consist of money, but of one or more specific articles, the trustee may, after final judgment or decree against the defendant, surrender or deliver to the officer charged with the execution issued on such judgment or de- 29 R. 1. 211

cree the specific articles, in order that the same may be taken on execution.

SEC. 583. Such surrender or delivery shall be a good discharge to the trustee for such articles, as to both plaintiff and defendant in the action.

SEC. 584. Whenever any person shall be served with a copy of a writ by which he shall be sought to be charged as trustee of the defendant named therein, and such person shall appear and answer to the action or suit so commenced, as to whether he is or is not a trustee of the defendant, the court in which the action or suit is brought or may be pending shall determine whether the person so served is properly chargeable as the trustee of the defendant; and if chargeable, to what extent.

28 R. L. 38... SEC. 585. Any person summoned as trustee of a defendant making a false answer or affidavit in any case shall be liable to the plaintiff in an action of the case for any damages which may result to him thereby from such false answer or affidavit.

SEC. 586. If any person, copartnership, or corporation, served as trustee with a copy of a writ, shall refuse or neglect to render, on oath, an account of what personal estate of the defendant such trustee had in his hands at the time of the service of the copy, such trustee shall be charged to the amount of the judgment or decree, if any, rendered against the defendant in the suit; or, if no judgment is so rendered because of want of service upon the defendant, then the trustee shall be charged to the amount of the just claim or demand which the plaintiff may show against the defendant to the satisfaction of the court. The amount for which the trustee is charged may be recovered by an action on the case against him, except as provided in section 623.

SEC. 587. If several trustees shall neglect or re-



fuse to render an account upon oath in the same case, then the plaintiff shall bring his action against all such trustees jointly, and in no other manner.

SEC. 588. Every person who shall be served with such copy of a writ against any defendant may file an answer to the action or suit and defend the same in behalf and in the name of the defendant.

SEC. 589. If it shall appear by the disclosure that the person who, or copartnership or corporation which, had been served as trustee with a copy of such writ had not any of the personal estate of the defendant in his or its hands, then the action or suit shall be dismissed, and the trustee who shall appear to defend the same shall recover his costs, unless the writ has been duly served on the defendant.

SEC. 590. Whenever the personal estate of any defendant is attached on trustee process, any person claiming said personal estate, under an assignment or otherwise, may on his own motion become a party to the action or suit so far as respects the title to said personal estate.

SEC. 591. The answer sworn to by a trustee shall be considered true in deciding how far said trustee is chargeable; but either party to the suit, or any claimant of the estate so attached, may allege and prove any facts, not stated nor denied by said trustee, that may be material in so deciding. *Repealed*  
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SEC. 592. Any question of fact arising upon such additional allegations may be tried and determined in the manner that the court shall direct.

SEC. 593. In all such cases the costs may be apportioned as the court may determine.

SEC. 594. No assignment of future earnings shall be valid, excepting as between the parties thereto, until the same has been recorded in a book to be kept for that purpose in the office of the recorder of deeds,

if there be one, otherwise in the office of the clerk of the town or city in which the assignor resides, if a resident of this state, or in which he is employed, if not a resident of this state.

SEC. 595. Every person, copartnership, or corporation served with a copy of a writ for attaching the estate of another in his or its hands or possession shall be paid all lawful costs and charges which he or it shall incur in consequence of being served with such writ of attachment by the person who brings the action or suit; and so much of such charge as shall be judged reasonable by the court before whom the cause shall be pending shall be allowed in the bill of costs.

SEC. 596. The word "trustee," wherever occurring in this title, shall be deemed to include the words "attorney," "agent," "factor," or "debtor."

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## CHAPTER 31.

### OF EXEMPTIONS FROM ARREST AND FROM ATTACHMENT.

SECTION 597. No female shall be arrested on original writ in any action founded on contract.

SEC. 598. No person entitled to vote shall be liable to arrest upon any civil process on the days of election of city or town officers, of state officers, representatives in congress, or of electors of president and vice-president of the United States, or on the day preceding or on the day following such election.

SEC. 599. No officer, non-commissioned officer, or private shall be arrested on civil process while going to, or coming from, or remaining at any place which he shall have been ordered to attend for the

election of any military officer or the performance of any military duty.

SEC. 600. The person of every member of the general assembly shall be exempt from arrest, and his estate from attachment, in any civil action, during the session of the general assembly, and two days before the commencement and two days after the termination thereof; and all process served contrary hereto shall be void.

SEC. 601. The following goods and property shall be exempt from attachment on any warrant of distress or on any other writ, original, mesne, or judicial:—

1. The necessary wearing apparel of a debtor or of his family, if he have a family.

2. The working tools of a debtor necessary in his usual occupation, not exceeding in value the sum of two hundred dollars, and the professional library of any professional man in actual practice.

3. The household furniture and family stores of a housekeeper in the whole, including beds and bedding, not exceeding in value the sum of three hundred dollars.

4. The bibles, school-books, and other books in use in the family, not exceeding in value the sum of three hundred dollars.

5. One cow and one and a half tons of hay of a housekeeper.

6. One hog and one pig of a housekeeper, and the pork of the hog and pig when slaughtered.

7. The uniform, arms, ammunition, and equipments of every officer, non-commissioned officer and private in the militia, and the arms, ammunition and equipments of any person which are kept for use and not for sale.

8. The debtor's interest in one pew in any church



or meeting house in which he or his family usually worship.

9. The debtor's interest in one lot or right of burial, as the case may be, in any cemetery.

10. Wages due or accruing to any seaman.

11. Debts secured by bills of exchange or negotiable promissory notes. 29 R. 1. 193, 194

12. The salary or wages due or payable to any debtor not exceeding the sum of ten dollars, except when the cause of action is for necessities furnished the defendant, in which case costs shall in whole or in part be allowed or not at all, in the discretion of the court.

13. The salary and wages of the wife and of the minor children of any debtor.

14. Such other property, real, personal, or mixed, in possession or action, as is or shall be exempted from attachment and execution, either permanently or temporarily, by general or special acts, charters of incorporation, or by the policy of the law.

SEC. 602. No interest of any person in any pension fund or in any pension derivable therefrom, for the benefit of policemen or firemen, now or hereafter created or held by authority of law by any city or town, or by any public officer or officers or board of officers therein, to which fund such city or town contributes in any way, shall be subject to trustee process or liable to attachment on any writ, original, mesne, or judicial, or be taken on execution or any process legal or equitable; and no assignment of any such interest shall be valid.